

1897-029 Chancery Causes. H. L. Flanary vs. Elkanah Pennington  
Lee Co.

Orr, Litton, Herndon, Hobbs, Cox, Bryant, Rivers, Jesse, Scott

CA - Estate Dispute  
T - Property

- Deed



To the Hon. W. T. Miller, Judge of the Circuit Court of Lee county, Va.:

Humbly complaining your orator H. L. Flanary and your oratice<sup>2</sup>s,  
Lizzie Orr, nee Flanary, Rebecca A. Flanary, and Mary Flanary, children and  
heirs at law and widow of Thomas Flanary, deceased; and grand children  
and daughter of Levi Pennington, deceased; the said Rebecca A. Flanary  
being an infant and under age, <sup>1</sup> issues by her next friend H. L. Flanary.,  
would respectfully represent and show unto your Honor that the said  
Levi Pennington in his lifetime was possessed of two certain tracts of  
land, his home place whereon he lived, near the present town of  
Dryden, and the other known as the Bridges place, near to, but not ad-  
joining the home place, and North thereof. On the Bridges place there <sup>is</sup> as  
a spring of water of moderate volume and sufficiently elevated  
to be carried in pipes to the home place, and sufficiently near to  
be used for farm and domestic purposes on said home place. On the  
24th day of April, 1867, the said Levi conveyed the Bridges place  
to his two sons William and Elkanah Pennington reserving the use of  
water on the same to himself, a copy of this deed marked 1 is filed herewith  
as part hereof.

The said Elkanah and William Pennington conveyed these same  
lands whereon the said spring is situated to William Yeary by deed  
bearing date Oct. 29, 1870, with covenants of general warranty, in which  
they made no reservation. A copy of this deed marked 2 will also be  
found filed herewith, as part hereof. William Yeary by deed bearing date  
on the 18<sup>th</sup> day of March 1871, conveyed these same lands to S. C. Stallard  
and by a post script thereto attached undertook to reserve a  
use to the water thereon in favor of the said Levi. A copy of this  
deed marked 3 is also filed herewith as part hereof. The said S. C. Stallard  
by deed bearing date on the 14<sup>th</sup> day of May 1878, conveyed  
these same lands to the said Thomas Flanary with a similar  
post script added to his said deed. A copy of this deed is also filed  
herewith as part hereof, marked 4.

Thus matters stood when on August 6th, 1872 the said Levi  
Pennington conveyed to the said Elkanah Pennington the home place and  
whatever right ~~that~~ the said Levi had, if any, which he could con-  
vey, to use water from the said Bridges place. A copy of this deed is  
herewith filed as part hereof marked 5.



By this last conveyance it will be seen that the said Elkanah for the first time became clothed with the said water right which he had theretofore conveyed to William Yeary by deed with covenants of general warranty. This covenant as your complainants are advised runs with the land, and inures to the benefit of the holder thereof; so, as they are advised, the said Elkanah, having conveyed said water right when he did not have title thereto, when he afterwards became clothed with that title it instantly vested without further conveyance in his grantee or his vendee absolutely, and thus by operation of law, said water right became absolutely vested in your complainants; and the said Elkanah Pennington has no interest whatever therein. Notwithstanding these plain principles of law and equity, the said Elkanah lays claim to the said water, and the use thereof, and the profits therefrom, as herein after set forth. After all these several conveyances and about the year 1889 or 1890 the Louisville and Nashville Rail Road was constructed partly through the Southern edge of the home place and a depot was established thereon and the town of Dryden has grown up around it. The said Elkanah Pennington undertook to convey the use of water from the Bridges spring to said Rail Road Company, as your complainants have been informed. Not content with this he has entered upon the said Bridges land, constructed a reservoir at the head of said spring from which nearly the entire water is conducted into pipes some several yards on the said Bridges land, and thence onto the said home place, and on to the town of Dryden, where the said Pennington delivers the same to the citizens thereof, and for which he charges and receives rents, and thereby turns the said water into profits to himself. Your complainants are advised that under said deeds the said Elkanah Pennington has no right whatever to the use of said water either on or off of said land, but if they are mistaken in this, then that he has no right to do other than take and use water out of and from said spring; and that he has no right whatever to construct reservoirs and lay pipes and conduct off of the said land the water flowing from said spring. But if mistaken in this view, then that he has no right to pipe use and take away any more water than what is necessary for the use of the home place, and he cannot sell rent or convey it to the use of any one except himself for the farm whereon the said Levi



resided. Much of this water is used off of said farm and on other lands. The deeds under their peculiar language and the unusual and uncertain course and effect of the conveyances creates a cloud over the title and greatly interferes with the free use and enjoyment of your complainants property, and would materially lower the price thereof, should the said Pennington's use thereof as claimed by him be found to be his right. The rents and profits of said water is derived from numerous persons and has been running on for some time and involves matters of long and complicated accounts, and the same is being thus daily used by the said Pennington, owing to this fact, and the impossibility of a correct ascertainment by complainants of the amount of such rents and profits, they pray that the said Elkanah Pennington be enjoined and restrained from renting, selling or delivering to the citizens of Dryden or any other person or persons by pipes or otherwise any of said water, and that he disclose and make known how much he has received therefor and from whom and when received; that he be required to take and remove the pipes, reservoir and other work off and from said land; that a decree be rendered making clear and specific your complainants title, and fully and clearly defining the said Pennington's right, if he has any, to the said water.

To this end they pray that ~~that~~ the said Elkanah Pennington be made the party defendant to this bill and that he answer the same, but not on oath, that being waived; that the injunction and relief herein prayed for be granted, and such other ~~and~~ further and general relief ~~and~~ the complainants may be entitled to receive.

May process issue, directed, &c., and your complainants will ever pray, &c.,

Pridemore & Sewell,  
Orr, Blankenship & Ewing,  
P.Q.

Virginia, Lee County, to wit:  
I, Wm. A. Orr Jr., a Notary Public in and for the County and State aforesaid, do certify that W. L. Hawery this day personally appeared before me in my said County, and made oath that the facts stated in the foregoing bill are true, so far as they depend on his own knowledge and so far as they depend on information derived from others he believes them to be true.  
September 25th 1895. W. A. Orr Jr. Notary.  
H. L. Talarney,



upon examination of this bill & exhibits filed  
thereunto, answers of Elkannah Pennington's affidavits  
filed therewith I am of opinion that while  
the rights claimed by the plaintiff & defendant  
should be adjudicated & settled, after the bill has  
been matured & cause ready for hearing yet  
there is no reason why an injunction should  
be now granted & the same is therefore  
refused. This July 16<sup>th</sup> 1846

W L Miller Judge  
Circuit Court of Lee Co Va

H. L. Gilman et al  
Bill in Chancery  
Elkannah Pennington



H.L.Flanary et als.

Plaintiffs

vs.

In Chancery.

Elkanah Flanary

*Pennington*

Defendant.

To the Honorable W.T.Miller, Judge of the Circuit Court for Lee County, Virginia:

The answer of Elkanah Pennington to a bill in chancery and notice by H.L.Flanary and others, praying for an injunction enjoining and restraining this respondent from using, renting, selling or delivering to the citizens of Dryden or any other person by pipes or otherwise, any of the water from the spring on the tract described in said bill as the Bridges tract.

Respondent is advised that said bill does not disclose sufficient grounds to entitle the complainants to an injunction, as prayed for in said bill. But should other and further answer be required of said respondent, answering he says that it is true that the late Levi Pennington, in his lifetime, was the owner of two certain tracts of land, one the home place upon which he then resided, near the present town of Dryden, the other the Bridges place near to, but not adjoining said home place. It is further true that there is and then was on the Bridges place, a spring of water sufficiently elevated to be carried in pipes to the home place. But it is not true that said spring was sufficiently near to the home place to be used on said home farm for farm and domestic purposes, without carrying the water from the same in pipes from said spring to said home place. It is not true that said spring is only of moderate volume of water but upon the contrary, said spring is a large free and bold running spring, affording sufficient volume of water for the Bridges farm, the home farm and two or three others of the size of both of said farms.

It is true that on the 24th day of April 1867 said Levi Pennington conveyed to this respondent and his brother William the Bridges tract of land, and in said conveyance, the said Levi in these words reserved water on said tract of land for the use of



the place he then lived on, to wit: "The said Levi Pennington reserves to himself full privileges of water on the above conveyed lands for the use of the place he now lives on forever." It is further true that on October 29th 1870, your respondent , together with his brother William, conveyed that part of the Bridges tract of land, upon which said spring is located, to one William Yeary, as is shown by the deed, a copy of which is filed with the complainant's bill marked 2. It is true that this conveyance is with covenants of general warranty, and that no reservation is made. But while it is true that no reservation was made in said deed, yet said Yeary fully understood that the said Levi Pennington had made the reservation, as shown above, and that your respondent and his said brother were selling said land subject to said reservation. It is further true that the said Yeary and his wife, by deed, conveyed said land to S.C. Stallard. In this conveyance, the said William Yeary and wife reserved to the said Levi Pennington the privilege of a water ~~right~~ right to said spring, as is fully shown by exhibit 3 filed with complainant's bill. It is further true that the said Stallard and wife afterwards, to wit, on the 14th day of May 1878, conveyed said land to Thomas Flanary, under whom these complainants claim. In this conveyance the said Stallard reserved to Levi Pennington a privilege of a water right to said Spring. These reservations by the said Yeary to Stallard, and by the said Stallard to Thomas Flanary, were intended to secure to the said Levi Pennington and those claiming under him, the said Pennington's home place, the full right of the reservation made in the deed of the said Levi to your respondent and his brother William. And respondent is advised that it charges the said Thomas Flanary and those claiming under him with full notice of the fact that the said Levi Pennington had reserved the right to use the water from said spring on the Bridges tract for the benefit of said home place forever. It is further true that on the 6th day of August 1872, the said Levi Pennington conveyed to this respondent the home place and the reservation of ~~of~~ the water right which he had made and retained to himself in the deed a-



foresaid. It is true that respondent then for the first time became clothed with said water right. Respondent denies that his covenant of general warranty contained in the deed to Yeary enures to the benefit of the complainants as the holders and owners of said tract of land, because in the conveyance to them by Stallard and wife as well as in the conveyance by the said Yeary and wife to Stallard, said water right is reserved to Levi Pennington, and your respondent is advised that it matters little how strong the covenant may have been in the deed of himself and William to Yeary, yet that the complainants are entitled to no benefit therefrom above that which is contained in their own deed. Respondent denies that his title to said water right instantly vested in the vendees of his grantee, by operation of law or that said water right became absolutely vested in complainants because even taking it for granted that said water right would by operation of law have become vested in his grantee Yeary by reason of the covenants in the deed of himself and William Pennington to Yeary, yet he denies that it became vested in the grantee of Yeary or in the complainants because said water right is expressly reserved by Yeary in his conveyance to ~~St~~ Stallard, and by Stallard in his conveyance to Flanary.11

Respondent says it is true that he does lay claim to said water and the use thereof to the extent that he is now or ever has ~~x~~ used the same. That use is for water on the home place of Levi Pennington which was conveyed to respondent together with said water right by the deed of Aug. 6th 1872.

Your respondent will now show your honor the exact situation of this whole matter. Several years prior to any conveyance mentioned in the complainant's bill and while the said Levi Pennington was the owner of his said home place and the said Bridge place he put in a line of pipes from his home place up to said spring for the purpose of drawing water from said spring on the Bridges place to his home farm for all the uses thereof. These pipes were in on the 24th day of April 1867 when the deed was made to respondent and his brother William Pennington, they were also in at the time when each of the several conveyances mention-



ed in the bill were made. They were in there on the 6th day of August 1872 when he took possession of said home tract under the deed of his father to him. They have remained in ever since. These pipes, thus in at the time your respondent took possession of said home tract, and as they had been in ~~xxxxxx~~ back through all the time of the making of said several conveyances were exactly the same size in bore as the pipes now in. Respondent will now show your honor that from the 6th day of August 1872 up to the present time he has had said line of pipes in withdrawing from said spring the same amount of water that he is now withdrawing from it, that he has asserted that as a right which he has openly, notoriously continuously and exclusively maintained, and he is advised that even though he may have no written title thereto (which he by no means admits) this continuous open notorious and exclusive possession under claim of right vests him with an indefeasable right and title to withdraw by the means which he is now using, the amount of water that he is now taking from said spring.

Respondent says that it true that he has constructed a reservoir at the head of said spring from which he is withdrawing water as aforesaid, but these complainants are the last people on earth that should make any complaint of that fact, because in the first place it is a very great improvement to said spring, in the second place, they helped him to erect it, in the third place, they are now using it and enjoying as many benefits from it as he is, but he most emphatically denies that he is withdrawing nearly the entire amount of water from said spring, but of the contrary he is not taking more than half at the dryest season of the present year, which he believes to be one of the dryest in the history of this country. From the head of said spring to where ~~xxxx~~ the branch from said spring leaves said land is about one hundred or one hundred and fifty feet. And there is enough water in said branch outside of said ~~tract~~ <sup>pipe</sup> to supply at least ten ~~farms~~ such farms as that owned by the complainants with all the stock water and all the water needed for farming purposes on such farms.



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It is true that respondent has been carrying and delivering water through his pipes from said spring to some of the people in the town of Dryden. This little town of Dryden is built on the farm known as the Levi Pennington home farm, and he is delivering water to no person off of said Levi Pennington home farm. It is true that respondent has received some rents from said water privileges amounting in all to the sum of about \$100.00 or \$150.00, but he most emphatically denies that he has received any profit therefrom, because all he has received from all sources, except for his own uses) will not begin to pay him interest on the expenditure he has made to put in said pipes. But respondent denies that this water that he has piped to, and is now being used by the citizens of Dryden does any injury whatever to the complainant, because as before ~~explained~~ stated he conveyed said water to his dwelling house where all that he did not use run out from the pipes and passed over his own lands down to a point between his dwelling house and the said town of Dryden where it sank. And all the water he is now taking to the town of Dryden is the excess over what he used for his family and farm purposes and was wasted on his own lands before he extended said pipes and would now be wasted if he did not conduct it to said town.

Respondent herewith files the affidavits of George C. Jessee and G.W. Pennington as part of this answer and asks that they may be considered along therewith. Said affidavits are marked "J.C. J." and "G.W.P.".

And now having fully answered respondent prays that said injunction be not granted.

Levi Pennington

Sworn to before me this the 11th day of  
November 1895

A. B. Munsey Clerk



Elkannah Pennington

ackd Answer  
y

H. J. Fleury +als

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Filed in open court  
and by leave thereof.  
Mar 10th 1896.  
A. B. Munsey clerk



H. L. Flannery & others Compts

vs

Elkanah Pennington Deft

In Chy

This Cause came on this day to be heard on the bill of the plaintiffs duly matured & rules and exhibits therewith filed. The answer of the defendant, with general replication thereto, the depositions of witnesses, and was argued by Counsel.

On Consideration whereof the Court is of opinion

First: That the reservation in this deed from Lord Pennington wife to Mrs. Elkanah Pennington constitutes an easement appurtenant to the tract of land on which the defendant now resides

Second: That Thomas Flannery took the land conveyed to him by S. C. Stallard & wife subject to said easement & his children the plaintiffs now hold it subject thereto

Third: While the Court is of opinion that the extent of said easement is only to take water from the spring in question in



manner & quantity which it was  
taken at the date of the deed from  
Levi Pennington to J<sup>rs</sup> & Elkanah  
Pennington to be used on the place  
now occupied by the defendant for  
domestic and farm purposes only  
and not for sale to others.

And the Court is of opinion from  
the evidence that there is at present  
being no more water taken from  
said spring than there was at the  
date of said deed & no more than  
is reasonably necessary for farm  
& domestic purposes & that the over-  
flow furnished to the citizens of  
Dyers does not pay interest on  
the sum expended in putting it  
there, that therefore while it would  
be improper for the Court now to  
adjudicate what the rights of  
the parties may be in the future  
should said spring by reason of  
the growth of Dyer or other  
cause become a source of ~~income~~  
and profit yet at this time  
the defendant should not be  
enjoined from furnishing



water to the Citizens of Dryden  
or required to account to the  
plaintiffs for any of the proceeds  
thereof.

It is therefore adjudged, ordered  
and decreed that the plaintiffs  
bill be and the same is  
thereby dismissed at the costs  
of the plaintiffs for which upon  
taxation, issue

~~And that the same be taken~~  
~~from the docket~~

Wherefore, it is

On motion of plaintiffs  
a suspension of the above  
decree is granted upon  
for the period of 60 days  
upon the condition that  
the plaintiffs or some one  
for them execute bonds  
before the Court in this  
Court in the penalty  
of \$500.00 to pay such  
damages as may be  
sustained by reason  
of said suspension.



H. L. Henry & Co  
v. G. Dixon  
General  
Elk Creek Pennington  
Eu. C. O. B. No. 6. b. 87

Under  
W. F. H.

Nov 10<sup>th</sup> 1897

30



The Depositions of Mary E.  
Flannery and Elizabeth O'Dor  
taken by agreement of  
parties at Dryden Va Jan  
the 5th day of June 1897  
to be read on behalf of the  
~~Plaintiffs~~  
~~Defendants~~, in rebuttal  
in <sup>the</sup> Chancery cause of  
H. L. Flannery et als. against  
O'Kane & Pennington  
in the Circuit Court  
for Lee County.

Present - W. A. D. for Plffs and Ed. Kane & Pennington for Defs.

Questioners by Defs to Circuit.  
Ques! Did the Deft, ever tell you  
that his present pipes were  
sent in, that they cost him  
only from five to six or  
seven hundred dollars,  
but that he told others they cost  
more, as words to that effect?

Ans. He told me that they cost him from  
six to seven hundred dollars, that he  
had not made any particular calculation  
his wife told me that they cost one  
thousand dollars she told me so be-  
fore the Defendant told me they cost  
six to seven hundred dollars



2 page

This conversation took place about the time the  
pipes was completed

Ques 2 Did Deft. ever talk to you about  
you and your children giving  
him the right to convey water  
by pipes from the Spring in Can-  
tronsy to Dryden for the Rail  
Road Co. and if so state what  
was said between him and  
yourself on that subject on that  
occasion in reference  
to that matter?

Ans. he had talked to Harvy several times  
about getting the right for the Railroad Company  
so harvy told me. and one morning he come  
to my house and wanted me to make deed  
to Spring for purpose a bove mentioned and  
I told him that <sup>thing or other</sup> the Rail Road Com: would <sup>have to</sup> give  
him One Thousand Dollars, for same before  
she would do so

Ques 3 Did you on that occasion  
or any other occasion tell  
him that he had been a great  
help to you in raising your  
children, and did you see that



God save

account become satisfied  
for him to take the water

Ans. No Sir I did not he told me that he  
had made it appear that he had done  
more ~~for~~ <sup>for</sup> the children than he natur-  
ly ~~had~~ <sup>had</sup> ~~done~~ <sup>done</sup> I don't see why you do  
so <sup>he says</sup> that he had a reason for I to

This answer excepted to be cause of  
W. A. Orr Junior is standing up  
& dictating the answers for the witness  
the the witness seem to look to the  
said W. A. Orr to save up this and  
The objection is not a <sup>Elkanah Pennington</sup> fact  
or a <sup>or a</sup> ~~fact~~

Ques 4 State anything the Defendant  
may have said & you at any  
time about Col O'Brien wanting  
him to secure from you  
the right to convey the water  
from the Spring to Dryden  
for the V.E. Co. if he said  
any thing about it.

Answers Just what I told you a while ago

Ques 5 Did the Deft. at any time before  
he put in the present pipes



tell you he would leave it  
to the boys, meaning some of  
the Dymann people, as to what  
part of the profits you should  
have on the water to be de-  
livered in Dymann, and  
did he or not make this  
proposition for the purpose  
of obtaining your consent?

Ans The first mentioned that the boys, in  
Dymann would need some water I have  
thought that I would take the water down  
for my part and let the boys pay  
her for her part. he said that he was  
afraid that the RR Co would hold him  
responsible for the water on acct of  
the Depot being located here. his wife  
was present at the time of this conversation  
and was not satisfied at the idea of  
him wanting to divide the profits  
of water at the same time I told  
him that the children <sup>when they</sup> become of age  
that they would not be satisfied  
and would give him trouble if the  
thousand dollars was not paid

Ques 6 Did you or your children



2nd Sheet

at any time give your consent  
for the Defl. to put in the  
pressed-pipes at your Spring?

Ans. I did not I did not tell him to  
put them there nor not to put them  
there

Ques 7 Did you for yourself or for any  
of the other plaintiffs, at any time  
authorize H. L. Hawley to make  
any concessions or admissions  
to the Defl. for the purpose  
of bringing about a compromise  
of this suit?

Ans. I did not

X By E. L. Pennington ~~Henry E. Tinsley~~  
Ques 1 Could you not of stated all of these  
answers when you was not to state all  
the conversation between you & Elkand  
Pennington & do you remember of stating  
in your deposition hear to fore that said  
Defendant had never said any thing to you  
about putting in the iron pipes, until  
the pipes wa put in now then what has  
or has caused you to remember so much  
more now than hear to fore has told you  
that it was necessary for you to remember



A 1

These fresh or now added facts  
I stated all the <sup>best</sup> that was asked me before  
and no one has told me any thing or now  
facts well I don't remember the exact statement  
in my deposition but it is there to show  
for all to see

Ques was the iron pipes in before said  
Dependent came talkin as you said for  
the B. E. Co Benipit now did said  
Dependent come to you for permitting  
to put in the iron pipes ~~or~~ or was it  
the pipes put in without <sup>you</sup> consulting  
me

A no he told he was going to put them in at  
the head of said spring I never told <sup>him</sup> to put  
them there or not to put them there

Ques has there ever been any talk though  
you Plaintiffs as to whether <sup>or not</sup> if you was  
heat in this suit that it wouldnt  
cost the plaintiffs any thing much  
as the farm on which said spring  
is located has been sold by a decree of  
court & still stands good for the  
purchaser money sold for

Ans I havent had any thing said about such  
talk  
Mary E. Flanagan



Elizabeth Cross a witness  
heretofore Testifying in  
this Cause being ~~sworn~~  
in rebuttal Deposes and says:

Ques 1 Were you present at a time  
when the Deft in this suit had  
a conversation with your  
Mother concerning the cost of  
the line of pipes from your Spring  
to the Town of Dymore, 1870  
State what he said concerning  
that matter?

Ans Geo I was present at such time  
and he said I think to the  
best of my recollection they  
only cost him from 600 or  
700 hundred dollars he thought,  
but he had told others they  
cost him more.

Ques 2 Did you at any time act  
or as a witness for the  
Deft. to leave water an ac-  
count of any help Deft-  
may claim to have been to  
his mother in raising her children



Ans.

I never expressed any willingness for him to have water on any account, unless we were amply paid for such.

Ques 3

State if you remember any conversation you may have heard between your mother and Dept. in regard to the Dept. procuring a water right from your mother & her children for Col. O'Brien for the benefit of the B.P.C.?

Ans.

I remember him coming to our house and telling my mother that Col. O'Brien had been to his house and asked him why he had not been up there and got those minor kids deed to fuel-water. My mother told him when she and her children made a deed to her water the Dept. or Col. O'Brien would have to pay her and children one thousand dollars.

Ques 4

Did you at any time give your Bros H. L. Hanary



authority to recall any Com-  
missioners as a dissidence  
concerning this Suit - To  
Effect a compromise  
State what he may have  
said about such com-  
promise, if any thing?

Ans.

I never gave my Brother authority  
to do any thing in regard to a  
Compromise. But I do remember

H. S. Flanagan, my brother, coming  
to my house one day and telling  
me Mr. Pennington had offered  
a compromise and I told him  
no we did not go into the matter  
to compromise, and he said the claim  
was, to let him compromise with  
the Dept. and I saw old Dr. Stillard  
into paying the debt of 300 thousand  
dollars on the land I told him  
no again, and he said well if I  
can compromise and make 2 or 4  
thousand dollars out of this thing  
what need you care and then  
you can begin the suit - a new  
in your own name.



X was your recollection as clear when  
I asked you gave your statement some time  
back in your Deposition as it is  
now as you now so well remember  
the conversations of long ago will you please  
state the time of such conversations  
day of month or month of year &c

Ans

My recollection in regard to the  
matter was as clear when I gave  
my former statement as it is  
now, but I was not asked  
to tell this last statement, and  
as to the time it was just about  
the time L. and N. R. R. was being  
built, and as to the day of month  
and month of year, I do not  
remember.

Ques is it not the fact, <sup>that</sup> the R. R. Co has  
a water right for their tanks & purposes  
from Shelby Hobbs a large spring near  
by the spring in controversy. now  
if the R. R. Co did wish to purchase water  
of the spring in controversy as they did not  
do so then are the plaintiffs in this suit  
in any way damaged by their wishing to  
do so

Ans,

Yes the R. R. Co has a water right as I  
am told from the Shelby Hobbs spring  
but it was not obtained until your  
efforts failed in trying to get the deed



from Plaintiffs.

As to the Damaged I know nothing.  
And further this Affiant Rayath  
Not Elizabeth A. Orr.

Wherefore going Depositions of  
Mary E. Hawary and Elizabeth  
A. Orr were taken, subscribed  
and sworn to before me  
at the time and place and  
for the purposes in the  
Captions mentioned  
by consent of parties  
Given under my hand  
the 5th day of June 1897

Robert W. Orr J. P.  
I Place 8 cents \$2.24



The depositions of A. J. Litton, & others  
taken before the undersigned  
Justice of the Peace at Dryden N.Y. on this 14th  
day of October 1896, under an introduction to  
the said depositions in behalf of the plaintiffs  
in a certain suit in chancery pending in  
the Circuit Court of the County of Sullivan  
of N. Y. where the plaintiffs are  
John & Benjamin Pennington.  
Present, John Pennington, Counsel for Plffs. and C. L. Garrison  
Counsel for Deft.

A. J. Litton a witness of lawful age and being  
first duly sworn, deposes and says, &c.

1 Please state your age, and  
place of residence?

Ans, Age 34 years & at Dryden N.Y.

2 State whether or not you  
are acquainted with the  
Citizens of the town of Dry-  
den. If you answer you  
are, state if you know how  
many families use water  
from the pipes running  
down from the Flannery Spring  
by Mrs. Elizabeth Pennington.  
I mean the pipes said Pennington  
own but not me?



The foregoing question is objected to because immaterial and irrelevant.

Nursean for Sept.

Ans. 2

I guess I know pretty much all the people in Dryden and they all gause water except Two or Three Families  
I suppose there is ~~Twelve~~ Eighteen Families gausing water

- 3 Please state if you know the rate Mr Alkanah Pennington charges for month or other wise for the use of this water if he charges anything.

Objected to because immaterial and irrelevant

Nursean for Sept

3

The charges are Fifty cents per month I dont know as to anyone else

4

<sup>or not</sup> Does these families thus using water reside on lots and land that formerly belonged to the old Levi Pennington farm?

5

I dont know as to that. It is on lands that E K Pennington owned when I came



5 Does not Mr Elkanah Pennington live at the old home place of his father Levi Pennington now deceased if you answer yes. State how far the town of Dryden where the water is used spoken of by you is from where said E. Pennington now lives?

5 It is as I understand it to be the old Levi Pennington home place. It is about 350 yds from said Pennington's house to the town.

6 How long has it been since the water was first piped to the town?

6 It has bin as well as I recollect. Five years since I came here and the water was here when I came.

7 Has or not Mr Pennington carried said pipes, and uses water from them, on his land across the main road south of said town?

7 Yes he has run it across said Road and delivers it in a trough on his land south of said Road.



- 1 The land on the south side of the road where Mr Punnington delivers water in to a trough is part of the Levi Punnington home place is it not?

Answer I don't know

- 2 How far is it from the town of Dryden to the spring from which the water is conveyed which the people of Dryden are using.
- 2 I guess about  $\frac{3}{4}$  of a mile
- 3 Have you paid Mr Punnington 50 cents per month for each month since you have lived in Dryden, if not how much have you paid him.
- 3 I think as well as I remember I paid 85 cts for a while I don't remember how long 65 cts for a while I don't remember how long I then paid 50 cts per month since I do not know how much I have paid him in all I owe him some now that is settled

And further this deponent saith not.

Witness my hand

A. J. Smith



Larkin Herndon an other witness of lawful age deposes & says:-

Question 1. Please state where you now live and how long you have known the town of Dryden & the farms on which it is situated?

Ans 1. I now live in the Town of Dryden and have now on the place ever since it has bin a Town and I have now on the Farm on which it is situated and neighborhood for Forty Five years

2 Is or was the town situated on a part of the old Levi Ossington farm?

2 Yes

3 Please state if you know how many families in said town use water from the pipes, running from the Flannery Spring to said town?

3 Objected for same reasons before stated

Duncan

I suppose Fifteen or Twenty

4 If you use or pay rent for said water, state how much, and state if you know any others & what they pay?



obj. still to for reasons heretofore stated  
Henn

- 4 I have not paid any myself  
John P. Herndon paid rent for the store  
for a while probably a year. I don't  
know how much. I don't know what  
Othello Pay
5. Is any of said water conveyed on other land  
than that of the Levi Pennington tract, and  
if so how much?
- 4 There is one pipe running across the  
road in to a pasture field on the  
France Zion Tract which is now  
owned by E. K. Pennington's wife
- State if you know whether Levi Pennington  
deceased or his son Elphrah have had pipes running  
across running to the Thomas Henry spring  
since 1867, or has there been any time of  
discontinuance of said pipes and if so when.
- 6 I can't tell about that
7. Was there at any time a well dug at the  
Levi Pennington residence from which  
they used water?
- 7 I remember something about the well
- X 4
- 1 What was that well dug?
- 1 I don't remember the date but  
it was in the life time of  
Levi Pennington



2 Has it before or after he conveyed his  
homestead to Elkanah Pummington?

2 don't know

3 Are you acquainted with spring upon  
the Bridges place, from which Elkanah  
Pummington conveys water in pipes  
if you say you are please state what  
kind of spring it is?

3 Yes I have been acquainted with the  
Spring for nearly five years It is reason-  
ably large good and everlasting Spring  
very little liable to change by dry  
or wet weather

4 Is said spring very near the east line  
of the Bridges Tract of land, and how far  
does the water run on said land until it  
passes to the land of some one else?

4 It is on the East end of the Har-  
mon and only runs 30 or 40 Yds till it  
runs into the branch from the  
Hobbs spring the branch then as I under-  
stand it is the line between said  
land and Hobbs land

5 Have you been to said spring since  
Elkanah Pummington has had his pipes  
in. If so state whether or not the  
Spring is in any way injured by said  
Pipes.



I have bin there several Times since the pipe has bin put in. The spring is bin considerably change by waling it up and thus lowering and raising the water. The water is good but for my Gause I would consider it Imgered for the convenience of the spring house

6 How deep is the spring panned up?

6 It is deep enough to dip up a bucket of water

7 How long is the wall around it.

7 It is a oblong square 4 by 6 ft I guess

8 Does not the spring house of Mrs Flannery embrace a part of the basin you speak of

8 Yes

9 Before said pipes were put in what became of the water from said spring.

9 It flowed into the Hobbs Spring Branch as above stated and then flowed down a hollow in a rather new direction passing by and west of my Fencing house near by and for many years when I first knew. It sunk on the Lucy Pennington land.

10. ~~The~~ said pipes take all the water from said spring, if not, about what proportion.



of it is carried off by said pipes.

Ans

To sir, I don't know the capacity of the pipe, but there is a right pretty stream flowing off out side of the pipe.

10

While Levi Pummington owned said land, and carried water in pipes from said spring, to his house what became of the waste water if any.

Ans

He watered his stock and some ran off into the brook.

11

Do you know the size pipes which Levi had in or the size of the pipes now in if so state the size of each.

Ans

At that time he used wooden pipes about the size of the broom. I can't say how many in number. I don't know the size of the present ones.

He examined in chief -

1

Is there any other constantly running spring on the plain - any farm except the one spoken of by you?

Ans

I think not. There are some seeps of water on it, but I think they are mostly surface or into water courses.

2

Please state whether or not the quantity of water taken



from this spring by the present pipes ~~in the place~~ does any injury to the plumery farm, in low times of water, by lessening the ~~amount~~ necessary for the use of stock on the place?

Ans. I think there is a sufficiency of water left on said farm for all the stock that could be kept on it necessarily, but the stream being smaller might require some means of collecting it.

2 What is the size or size of the present pipe in use?

3 How near the head of the spring does the pipe start out. I mean from where the water issues from the ground.

Ans. ~~About~~ The basin as I have above stated is about 6 feet long, and the pipe is rather at the east end of it.

4 Does not the water stand in a pond over the place known as the head of the spring. If you answer yes state how deep it is?



Ans.

Yes the water is raised but the exact depth I do not know, as before stated I think you can take an ordinary bucket and raise it up full  
4 Is there not sufficient fall, to run say an inch pipe from this Spring to E. Peasimflovie, there, without damming it at all?

Ans

I do not know, I would think so, for an inch pipe without damming

Re cross-examined

Could you put a pipe in there and get water to run in it at all without some damming.

Ans

I don't know I am not an expert in piping I do not know how that would be.

And further this deponent swears not.

Witness Called / day 50<sup>th</sup>

Exhibit 1

Oalley E. Flanary an actor witness of lawful age being first duly sworn deposes & says?

Question 1

Are you the widow of the late Thomas Flanary, if you answer yes. Please state whether or not you now reside on the place known as his home place?



Ans 31  
33

I am the widow of the late Thomas Flannery and reside on what is called his home place.

- 2 Please state how long you have resided thereon, and whether or not there has been pipes or pump logs, running from the spring in said place, to the dwelling house of your late father Levi Pennington now Elkanah Pennington's? all the time?

Ans

I have lived on said place eighteen years. There were wooden pump logs first put in there, then about 12 years ago my brother Elkanah put down a well, and for a while at that time the <sup>logs</sup> ~~logs~~ were out <sup>at the head of the spring</sup>. Then the well not proving satisfactory, he put in iron pipes and they have been in ever since.

I think the logs were out of the head of the spring for a year or two, or there I cannot say exactly.

- 3 Please state whether or not some four or five years ago Elkanah Pennington put in other pipes, and if so whether or not they are larger or smaller than the old ones, and what of them?



pipes extend on past the said dwelling house, on on to the town of Dryden. And whether or not you gave your consent to allow these pipes to go on to the town of Dryden?

Ans. At the head of the spring the pipes are longer than the wooden ones were, and these last pipes were put in by Elkayuk but I do not remember when he did so, but it was since the railroad was built, I suppose said pipes pass by his dwelling house and run into the town of Dryden as I see water delivered from hydrants in said town,

I was always perfectly willing for him to have water from said spring to his house whether he was entitled to it by his deed or not, but when it came to running it to the town of Dryden I thought myself and children were entitled to part of the pay for it, I do not know that I was ever asked for consent anything about it.

4 Please state whether or not in putting in these pipes the use and value of said spring is in any way injured? State all about it?



Ans

In the last walling, the damming of the water has caused it to flow more or deeper in my spring house, and the cement dam, not holding all the water there is a dam made on the lower side of the spring house which causes the water to dam up deeper in the spring house. This makes the water inside the spring house deeper and now inconvenient about getting in and about the spring house and at times causes the milk vessels to turn over and I now use rocks to set them on.

5. Is there any other constantly running spring on the place except the one from which, these pipes run?

Ans

There is no constantly running spring on the farm other than this one. On the upper end of the place there is some springs that run in wet weather.

- 6 In times of dry weather, is there sufficient water left after these pipes are filled to, supply the stock on the place; unless some more of perching, or holding the water in place is used?

Ans

The water only runs a short distance on said land until runs into the Hobbs brook.



and the water is tolerably shallow and we usually turn out our stock so that they go to both branches.

- 7 If you had not the use of the branch & water, off of but near your land would the overflow from these pipes sufficiently supply your stock at all times without the use of troughs or ponds?

Ans I think it would be close work, it would perhaps have to be ponded up.

X 24.

1. Were there pipes or pump logs conveying water from the spring on your farm to your father's place when your father purchased said land.

Ans Yes there were wooden pump logs conveying the water to his dwelling house.

2. Do you know the size of the bore in said logs.

Ans I don't know that I do. Are common size.

3. How were they put in at the head of the spring, was there any dam or anything made to cause the water to flow into the logs. State how this was.

Ans It was dammed up some, when I can first remember they were at lower edge of spring



house, but afterwards our water changed  
then we put them up in the pipes  
and now are they running? There is  
no water there. End of the pipe  
is now about where the end of the logs  
was.

4. Is the water flowing from said spring  
outside of said pipes any less in quantity  
now, than it was when your father had  
in his pump logs.

Ans. I believe it is. The pipes are larger. He first  
had small ones and then larger ones.

5. Do you know the size of the main line of  
the pipes now in.

Ans. About now that I do. The two first ones  
are larger than the ones first put in,  
and the next ones look larger also.

6. When was the spring walled up as now is.

Ans. About 1850. I was then a boy and  
was with some boys and we  
didn't know who had that. We  
took out the point in the brick wall,  
or rather inside of the rock wall.

7. Did he not consult with you about putting  
in said new walls, and did you not consent  
thereto.

Ans. The first time he had some brick there to wall it  
and always told me he had the right to



even? it, I don't know that I told him to do it or not to do it, I told him it would do me <sup>very</sup> well the way it was, I don't know <sup>that</sup> it is any better now than it was before though it looks better.

8 After the walling was done as it now is, did you not express yourself as well pleased with the way it was done and the condition it was left in?

Expected to because no time, place or person is fixed, and expected to as to the next thing.

sub

I do not know that I did. If I did have forgotten.

9 Will you were not dissatisfied with <sup>it</sup> when you

sub

I rather it was not there unless I was getting some hay for it.

10 As the spring was before your brother walled it up as it now is, in times of hard rains did not the surface water mud & wash into said spring?

sub

It is sometimes, it seems now to get muddier earlier than it did before, I don't know what causes it. It gets muddy now even a little rain I don't know what causes it. It did not do so before so much digging and walling was done.

11 Does it ever wash from rains into the spring as it now is

sub

It did in the big rain about the 1st of April, last



12. Did you know at the time Elkanah put in the pipes that he was going to convey water to Dryden.

Ans

He told me he was. He had said something about their wanting water, & something about he had been ~~thinking~~ about taking it down for himself, ~~and~~ letting the boys have water and ~~they would~~ they would pay me. I understood him to mean that John & John from they had built at Dryden.

And further this witness saith not.

Dolly E. Thamar.

The 2<sup>nd</sup> witness, not a witness of lawful age and being under solemn oaths and says.

Q. is

1. That is your age and where do you reside?

Ans

1. I am 87 years and live in Dryden Va and have been living here about 5 years.

2. I do not know where the water comes from. I have heard that the pipes are in so some say where the pipes were in.

2. he has and the pipes has been in for 7 years and may be longer.

3. Very many families use the water.

3. I know suddenly of two families having water from Dryden in their houses I have saw others having from the Dryden.



These many families compose the inhabitants  
of this town.

4 I now count 22 Families living in the town

5. Have you a total station. This water is from  
any other source than the hydrographer in  
at Mr. Livingston?

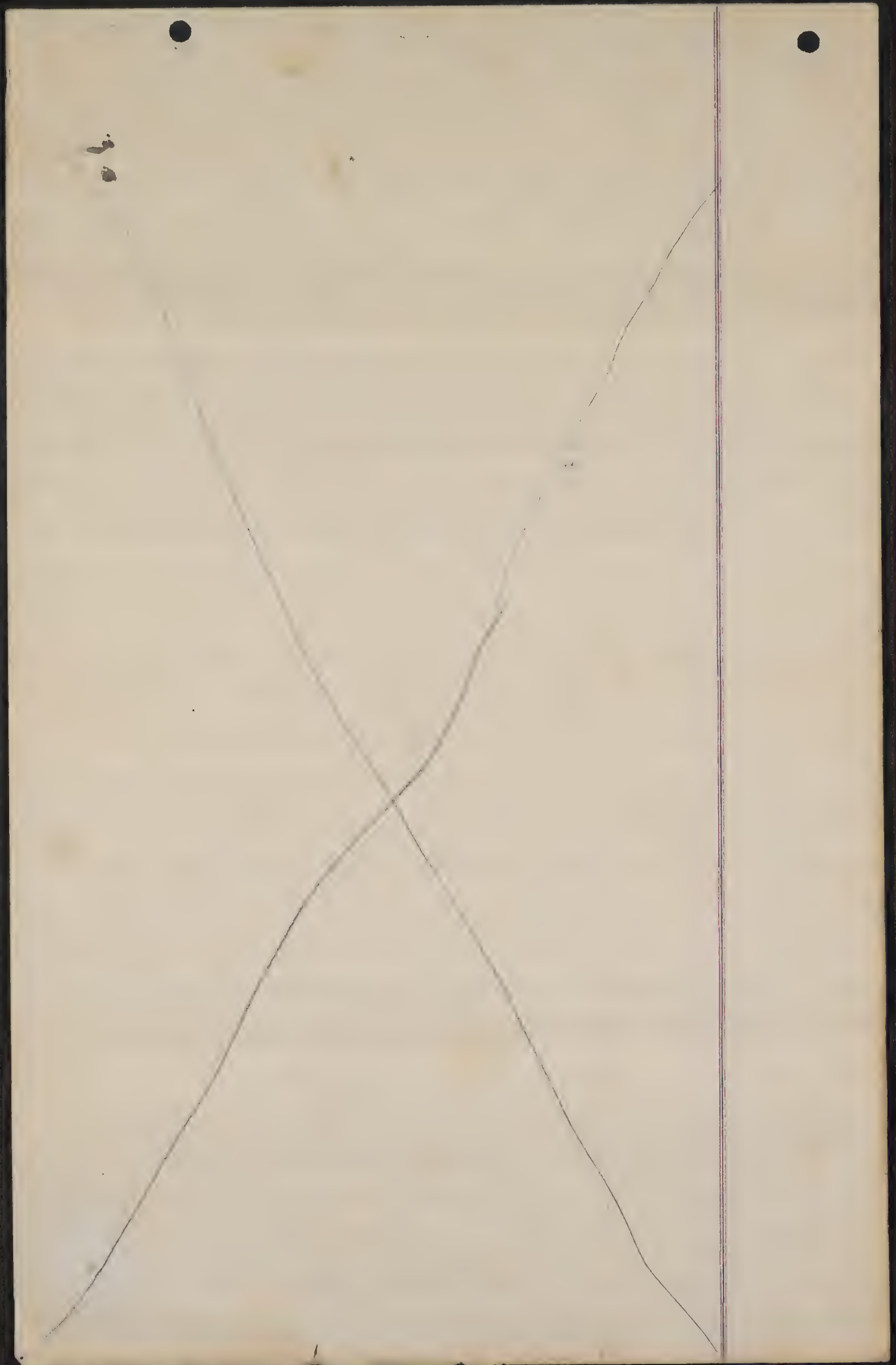
4 I have seen some three or four persons  
carrying water from other places  
to the river.

How much love you did Mr. Livingston, for  
the rest of us. We have much to tell  
and much to do. We are all well and much  
for you. Love, for near to 100 years, my Mr.  
Livingston.

6 I don't know for sure. but it seems to me  
the first year. that John Zion & myself  
paid 80 or 85 cents per month amounting  
to about \$8.40 and last year I think I paid  
him \$2.00 or \$3.00 since then I have not paid  
him ~~as~~ any thing yet, we have not settled  
and I don't know whether he is charging  
me any thing or not. He takes or three  
dollars each for pasture & water together.

7. To enquire whether any water has been  
delivered from Mr. Pennington's, since  
the time of the last order.







7 I don't know The boundary of  
The Living Pennington Tract

X Examined

1 You say there are about 22 families of people  
living in the town of Dryden, how many of  
these families are able to pay a monthly  
sum for water?

1 I don't think there is half of The People  
of Dryden is able to pay for their  
water and their Taxes

2 Do you know whether Mr Pennington is  
expecting and close in collecting water rents  
or otherwise?

2 No not know

3 Are you acquainted with Spring on the  
Hanson farm from which Mr Pennington  
brings water in pipes, if so please describe  
its size and condition?

3 I am acquainted with said Spring I have  
been at it several times It is a very nice  
Spring. There is a wall around it neatly  
put up as well as I could tell about  
3 by 5 ft The water at the upper end  
seemed to be 12 or 14 in deep getting  
shallower at the end of the wall where  
it runs out

4 Please state whether or not the pipes  
carry all the water from the Spring



and if not about how much runs out  
as a branch?

4. will they don't carry it all as to the  
amount that runs out in to the branch  
I can't tell there is a small branch  
Runs away from the Spring.

5. Does the branch that runs away from the  
Spring afford in your opinion enough  
water for farm use to such a farm  
as the Flansbury farm.

5. Yes sir it does

6. Does the manner in which said spring  
is walled, in anyway interfere with the  
value and usefulness of said spring for  
farming and farm purposes

6. I do not think it does

7. Do you know what it cost to put in  
the line of pipes from said spring to the  
Town of Dryden, if not give your opinion  
of what would be the reasonable cost of  
putting in such a line of pipes?

7. I do not know what it did cost  
but my opinion is that such a line  
of pipe could not have been put  
in for less than Five Hundred \$  
The expense is not however excepted  
to as insignificant or immaterial.

Wm. L. L. L.

## Reminiscences

- 8 ~~7~~ Do you know the size of the pipe at the spring now is it not about 6 inches in the bore? when I knew it, it was about 8 in but I think they tuck it out and put in two or three joints larger
- 7 Do you know where the stock is usually kept on the Flaxey farm by the present owners.
- 9 They expect to keep two cows and two head of hore - one hog & a small lot.
- 10 Did not Mr. Downing on all the land on which the town of Dryden has been built?
- 10 He did
- 11 Did not the improvements at the water from the Flaxey spring in said town enhance the value of the lots?  

Objected to because immaterial  
Down can for Sept.
- 11 I don't know I bought the first the first lot that he sold before any water was furnished
- 12 Do you know of Mr. Livingston collecting any water rent in labor?
- 12 No sir I don't
- 13 Can you say you think such a line of pipes would cost \$500 - From what point do you estimate?
- 13 From the Spring the dirtier line.





Town. I do not know how many of these use water conveyed in said pipes

3. How many families use other water if you know.

Ans One family Mr Shufflebarger's use a well on the lot of A. J. & J. S. Leach. This is all I know of my own knowledge. I have been informed that the Hendon family uses a cistern on their lot.

4. How long have the well & cistern been in use?

Ans The well has been in use for about 2 years, the cistern has only been completed a short time.

5. Do any one at Mr Pennington charge any of the citizens for the water from this pipe & if so how much?

6 I know nothing about any one else except myself. The firm of A. J. & J. S. Leach for a while paid him 85 cents per month then for a while we paid him 65 cents then 50 cents per month. This is my best recollection. I am unable to give the periods of 85, 65 & 50. We only paid Water rents for about 3 years. My present recollection is that we paid him in all about \$20.00

7. Is any of the water carried in <sup>said</sup> pipes any other than the said Pennington's?



Ans

I think all pipes runs across the road and delivers water on said which as I understand formerly belonged to France Zion, but now belongs to Elkanah Punnington & wife

8. Did or at the bringing of water to the town  
by Mr Punnington  
& I order, enhance the value of lots in the town.

Ans

I would think so. My judgment is one half

X 4

1 How many of the families living in said Town are able to pay water rents?

Ans.

I think they all are?

2 Do you think water rents could be collected from all of them.

Ans

No, not unless they saw cause to pay it.

3 Are you acquainted with the Fleamony spring from which Elkanah Punnington brings water in pipes to his dwelling house and thence to said Town, if so please tell the size and condition of said spring as well as you can?

Ans

I cannot remember the time that it. Never examined its condition.

Subscribed this witness with me.

Witness 3 days 8/50.

A. J. Cox

The A. J. Cox, master witness of said are and are  
in error deposes and says.

Ques  
Ans

1. Please state your age and residence  
I am 36 years of age and reside  
in the town of Dryden. Have  
lived in said town about  
2 years.

2. Are you the husband of Emily A Orr one of the  
plaintiffs in this suit.

Ans I am.

3. How many families live in the town of Dryden  
and how many use the water from the pipes  
laid to said town by the defendant?

Ans There are 22 or 23 families in  
said town and they all use  
said water unless it be one  
or two.

4. State if you know, how much the defendant  
charges the citizens of the town for water?

Ans I do not know

5. How many houses or barns in the town have  
now or have had, water conveyed from said  
pipes into them.

Ans The house in which I live; the  
John A Taylor house, has had  
water conveyed into the kitchen.  
The Barn lots of G.W. Pennington  
and A.K. DeBorst have  
water conveyed by said pipes  
into them. The water has been



running into the house in which  
I live since last March a  
year ago.

Now suppose, to estimate the value of  
the water to the town enhance the value of  
its in said town?

Ans. I think from all circumstances that  
one half would be a small  
enough Enhancement

7. What an excellent & air pipe for a family  
as compared with the old town <sup>to be</sup> for its use  
of said water?

Ans. I think it depends somewhat upon the  
population of the town. At the present  
population I think 50 cents per  
month is high enough.  
If the population were more  
I think one who owned the  
water could afford to charge  
less.

8. How many business houses or stores use said  
water or water to the houses you speak of?

Ans. Only two I suppose DeBuss's  
and Hobbs.

9. Are you acquainted with the Framing Spring and  
its recent condition in reference to the land &  
pipes inserted and the quantity of water taken  
by the pipes & the amount left in the

2  
Please tell all you may know about it?  
Ans. I am acquainted with said Spring; know  
something of its condition in regard  
to its Dam & pipes. The dam is con-  
structed of Bricks & cement on 3 sides  
& a natural Rock on the other.  
Dam is 3 or 4 ft. by 5 or 6 feet walls  
are perpendicular. The pipes come  
into the Pool from the east-  
End, through the east wall of said dam.  
The Pipe which comes into the Spring  
measures ~~measures~~ 15 inches  
in circumference with a cap  
on the head 18 inches in cir-  
cumference. I believe, from the  
flow of water I have seen come  
from the pipes further down the  
branch, compared with that  
which flows from the Spring House,  
that said pipes convey more  
than half of the supply of said  
Spring in times of ordinary  
or dry weather.  
I think there are two joints of  
the largest size pipes at the head  
of the Spring. From the line is  
of smaller pipe, from an inch  
and a half to two inches, I would  
guess, in bore.



Said Pool or Dam is about  
an third within the Spring  
House and the remainder  
comes out under the  
front shed of the Spring  
house, close to the door  
thorough and at the west end  
of said house

Q How does the dam + pipes effect the spring, does  
it in any way damage the spring in its efficiency  
or convenience to those using it, or in the height  
of the water in the pool?

A The Dam ponds up the water within  
the pool sufficient to dip up a  
large bucket of water full.  
The Dam seals so much around  
the rock referred to that it is also  
dammed up at the lower end of  
the Spring house so that the water  
will flood the head of the pipe  
sufficient to force the water into  
said pipes When it is so dammed up  
at the lower or east end of the  
Spring house, it also floods the place  
within the house where cows  
pans &c are used for dairy  
purposes and. I learn from those  
using said house that the

water when so forced up over  
turns or floats the vessels thereby  
spilling their contents. It also  
floods the platform on which  
one has to stand when attending  
to the duties incident to the spring  
house making such duties  
disagreeable and unpleasant  
and annoying.

The main pool, and also the  
place for pans, &c. &c. are thus  
made to contain most of the  
dirt, ordure, or filth which  
may and does accumulate  
in said places; not allowing  
such to pass off as freely as  
should be the case.

11. Is there not a sufficiency of water left by the  
dips to conveniently water a reasonable num-  
ber of stock on the farm, and how far is it  
from the reservoir existing house to the place  
nearest the farm?

Ans I do not think there is sufficient water  
left by the said dips to water such stock  
as the farm would accommodate,  
in its present condition and not  
near enough to furnish sufficient  
water for the stock which the farm



Could be made to accommodate.  
The distance from the Spring house to  
the fence below the spring house  
is not over 12 or 13 yards

Q. How far is it from the fence to the junction of the  
spring branch that flows from the Flanery spring  
with the branch from Stebbins' spring?

Ans. I think the fence is about one half  
the way between the spring house and  
said junction of branches

Q. You may consider is the difference, if any  
between the value of the Flanery farm with a  
reasonable sized pipe concerning the water  
from the spring to Mr. Huntington's residence for  
the use of his house, and the value of same  
with such a pipe or not?

Ans. I would consider the farm damaged  
by the present sized pipe from farm  
to six hundred dollars. If the pipe  
were only half as large, I  
would think the damage would be  
proportionately less. If such incum-  
brance was in the hands of some  
one unfriendly toward me, if  
I owned the place I would  
not be willing to allow such  
incumbrance to exist for  
any price could I prevent it.

14.

X 4

1

How many acres does said farm contain, and what proportion of it is cleared land, state the quality of the cleared land and its present condition as to productiveness?

Ans

There are something over 100 acres in the farm according to the Stallard Deed, and I would suppose about 50 acres cleared. At the present time the cleared land, or perhaps most of it is thin of a sandy nature, with some mixture of clay. Have been acquainted with crops for only about 2 years and don't know well of what it has produced.

2

You speak of a fence being situated about midway between the Spring-House and the junction of the spring branch with the Hobbs branch. State if said fence is on the line of the Hanany land?

Ans

According to the Stallard Deed it is not. The Hanany land extends to the junction -- of the branches

3

The branch as I understand it is the



eastern boundary line of the Flanory Tract from the junction southward or down the branch is this correct, if so how far or what distance does said branch bound said land?

Ans.

The branch is the Eastern boundary line from said junction of branches. The distance down said branch is about 700 yards to the South East corner <sup>said</sup> of Flanory land.

4 Which affords the larger volume of water the Flanory or the Hobbs Spring?

Ans. The Hobbs Spring is very much larger than the other.

5 Does not and cannot stock have access from the Flanory farm to the branch below the junction of said branches?

Ans. They can and do by taking them out through said fence and returning them to said Flanory farm.

The branch runs almost wholly through timbered land but the land south of said junction is enclosed by fence on the Flanory side of said branch.

6 If said fence crossed said branch at one or more points it would afford ample water to that part of the farm would it not?

Ans It would for that wooded boundary  
of the land

Q 7 You say there are some 20 or more families living in the town of Bryden that use water from Hydrants in said town, do you know of any of them, and if any, how many of them are paying therefor, and in this connection state how many of them are financially able to pay for it?

Ans Of my own knowledge I do not know how many, if any pay for water. I know of none who are not able to pay for the water if they want to & will do so.

Q 8 Are there not several of them who are so financially situated that you could not by law collect a debt from them, if so how many?

Ans I do not know except by exterior appearances what their financial circumstances are.

Q 9 How long have you lived in the Laylor house? during that time have you used water from said pipes, if so have you paid anything therefor, if so how much?

Ans I have lived in the Laylor House 2 years, have used the water from said pipes all that



him and have not paid any  
thing for the water because Mr  
Parrington told me shortly  
after I began house keeping  
that he would make us a  
gracious gift of the water right  
because my wife was retarded  
to him.

10. The barn and dwelling house <sup>of George Parrington,</sup> stand upon  
a part of the Levi Parrington home farm  
do they not?

Ans. I understood so

11. You say in answer to question six of your  
examination in chief that you think from  
all the circumstances the conveying of Water  
to said Town enhanced the value of lots one  
half. Now do you know of a single sale of  
a lot that carries a water privilege with  
it or a single sale in which water was  
promised, and is it not a fact that all  
lots sold before Water was conveyed to said  
Town sold for a higher price than they  
have since?

Ans. I do not know what the consideration of  
any of the sales of lots in said Town  
I saw a deed to the Baptist Church lots  
in which water was promised as  
long as it continued to be  
used.

37  
I was not here before the pipes  
were put in & don't know how  
lots sold them, but have learned  
that they sold more in ac-  
cordance with the boom price  
of land at that time than they  
do now.

12 How deep is the water in the spring house  
give the average depth?

Ans I would think it would average  
from 10 to 12 inches

13 What kind of dam is used at the lower end  
of the spring house to make the water deeper.

Ans It consists of rocks and dirt  
Some of the rocks are part of the  
spring house foundation and  
some are loose ones put in  
underneath the lower log  
with dirt & gravel to bound  
the water

14 How much stock is usually kept on said farm

Ans. There is now on the farm 2 head  
of cattle, 3 head of horses and 8 hogs  
for fattening purposes and some  
five small pigs. The amount  
of stock on the place since I  
have known it has not varied  
much from the above number



and further this deponent  
swears not -

M. A. Orin Jr

Let me see or other things of lawful age  
at the time of the same cases in law.

Ques 1. What is your name and where do you reside and  
are you one of the plaintiffs to this suit?

Ans 1. Twenty Two Years old live in the  
Town of Dryden, and am one of the Plain  
tiffs in this suit.

2. Have you ever resided on your fathers Thomas  
Flanerys farm?

Ans I was 4 years old when I moved there  
and lived there until I was married which  
was 2 years ago.

3. Do you remember when your father, Levi  
Flanery, ran his pump logs to your fathers  
farm, or rather do you remember there  
being there?

Ans I remember said pump logs being there  
They were there when we moved to the  
farm.

4. Were they at any time discontinued or removed  
and if so when and how long were they  
discontinued?

Ans To the best of my recollection they were  
discontinued for a while, I think this  
was about the year 1884, I don't

Know how long they were discontinued but I think for two or 3 years.

5. ~~When~~ <sup>When</sup> have they been discontinued, if you know?

Ans They dug a well is the reason as I suppose that they were discontinued

6. Does the present arrangement, or not, in any manner injure the spring or create any inconvenience in the use of the spring or ~~spring~~ <sup>spring</sup> and if so in what respect?

Ans I do not know whether it injures the spring or not I know that it gets muddy ~~as~~ <sup>as</sup> now than it did before Uncle Elkanoth. fixed it the last time I think the ~~present~~ <sup>present</sup> arrangement is to some extent an inconvenience to the spring house, for the reason that there is a temporary dam at the lower end of the spring ~~and~~ <sup>and</sup> below the reservoir dam which sometimes causes the well to be overflowed

X 24

1. You say that the pump logs were about the year ~~1850~~ <sup>1850</sup> out for a while, was this at the head of the spring or some distance below the head.

Ans 1. It was some distance below the head, that is they were taken out at the head of the spring



and were put in the branch some distance below the spring & the water run from the branch for watering stock and for washing.

2. Who took them out of the head of the spring and for what distance were they taken out, and where in the branch were they again put in?

Ans I suppose Mr Pennington took them out. They were taken out to where they were put in the branch. They were put in the branch about a little old house, perhaps 75 or 100 yds from Mr Pennington's house.

3. Are not the old logs that your Grand father had in the head of the spring still there, and are you not mistaken in any logs being taken out in 1884, and was not the brook in the line of logs carried, the logs rotting and being washed out by the branch?

Ans 3. No sir they are not, I know they were taken out at the head of the spring, and as to the balance I don't know whether they were taken out or washed out.

And further this witness saith not.

Elizabeth A. [unclear]

rehearsal A Flanery another witness of lawful age and being duly sworn deposes & says.

Swes 1. What is your age, and where do you reside?

Sub-1 Nine Ten Years Old, and reside with my mother at the Thomas Flanery Farm.

2. State what you may know about the pump as run by your Grand father, Levi Pennington, & he lived on the said Flanery farm.

2 I remember he had pump logs running to the Spring, and conveying the water to his house. I remember at one time when they were taken out or discontinued from the head of the Spring there was put in the branch about the Old McQueen house and water run from there to Grand father's house.

3. At the point where the logs run, where the water runs the branch on the Flanery farm or on the Levi Pennington tract?

3 It was on the Levi Pennington Tract  
X Ex.

1 Have the logs taken out by some person if so by whom.

1 Don't know

2. Do you know how long the use of water from said spring was discontinued & at the time said logs were out?



2

was done not 2 or 3 years  
I think it was about the year of 1884  
about the same time the well was  
dug

3

you were pretty young then were you not?  
I was about 8 years old

4

Were the logs taken out before or after the  
well was dug?

4

After

5

How long after?

5

I don't know exactly

And further this witness saith not.

Rebecca C. Flauery.

Virginia, Lee County, to wit.

I R. W. Orr a Justice of the Peace in  
and for the County and State aforesaid  
do certify that the foregoing depositions  
of A. J. Litton, Larkin Herndon, Polly C  
Flauery, W. H. Hobbs, A. J. Cox, Wm A Orr Jr,  
Lizzie A Orr & Rebecca A Flauery were  
taken subscribed and sworn to before  
me at the time and place and for the  
purposes in the Caption mentioned.  
Given under my hand this the 15th day  
of October 1896.

Robert W. Orr J. P.

105,25-

M. L. Flanery et al.

vs { Depts

Elkanah Pennington.

Filed May 4<sup>th</sup> 1897.

A. B. Munsey Clerk

A. J. Litton.

Larkin Hemdon.

Polly E. Flanery.

W. L. Hobbs.

A. J. Cox.

Wm. A. Orr Jr.

Lizzie A. Orr.

Rebecca A. Flanery.



(1)  
The depositions of Emmett H. Bryant  
Elkanah Summey, & others.

Taken pursuant to agreement at the  
spot in Dryden on the 29<sup>th</sup> day of October  
1896. before me Robert H. Orr a Justice of  
said County, to be read as evidence on  
behalf of the defendant in a Chancery  
cause now pending in the Circuit Court  
of Lee County Ia in which H. L.  
Flanory & others are complainants  
and Elkanah Summey is defendant.  
Present J. H. Orr atty for Plaintiff

" C. T. Summey atty for Deft.

Emmett Bryant a witness of lawful  
age being duly sworn deposes & says.

Ques. 1. Are you acquainted with the spring  
on the lands of the Plaintiff from  
which Elkanah Summey conveys  
water in pipes to his dwelling and  
thence to the house of Dryden, if  
so how long have you known it?

Ans. 1. I have known it about thirty years  
Ques. 2. When did you last see and have  
said spring.

2. This Evening

Ques. 3. Please state how said spring is  
arranged, if it is walled around, the  
depth of the water in side of said  
wall. ?

3 It is water with Brick, and is about 3 by 5 ft in size. The water in side of wall averages Seven in depth

Ques 4. State if you know the depth of the water in the Spring house and outside of the wall you now just described?

4 In the Spring house it averages from 3 to 4 inches

Ques 5. How much water runs off from said spring outside of the pipes?

5 I think about enough to fill a boat 1 1/2 in pipe

Ques 6. Were you acquainted with said spring before said wall was put in?

6 Yes Sir I helped to put the wall in

Ques 7. Was Mrs Flanary or any of her children present when said wall was being put in, if so please state if they made any objection to its being put in, or said anything about it any way and if so what was said and by whom.

7 Messrs Flanary & his son H L Flanary were present while we were putting in the wall. I had no objection by them while we were putting it in. Harry helped us a little Once or Twice Messrs Flanary, Told Mr Pennington that



It would be very nice if he would put a cover over it, to keep the cows out of head of the Spring. There is two large Deamones standing near the Spring I do not remember who mention putting the cover over first. No cover was put over it yet. & Please state whether or not, the wall thus put in, in anyway injures the usefulness or convenience of said Spring?

8 To it close not

± Examined.

1. Was Mrs. Flanery present all the time or only when she came to the spring for water?  
Once and a while. To get water or milk & Butter
2. Did Harry help any more than to assist in moving a large rock?  
He helped to put in one large rock and helped a few minutes at another time
3. <sup>There</sup> Is at ~~the~~ considerable mud settled in the spring now on account of the water being dammed up?  
There is some sand and mud below the pool in side of the Spring house but further this department with not.

Ernest F. Bryant

2. Hannah Purneyton another witness of  
lawful age being duly sworn deposes & says.

Ques 1. Are you the defendant in this suit.

1 I am

Ques. 2 How long have you known the spring  
from which you convey water in pipes  
to your dwelling house and thence to  
the town of Tryden.

2 I think about Thirty Six Years

Ques 3 If there was a line of pipes by which  
water was conveyed from said spring  
before you put in the present pipes  
please state who put them in, when  
they were put in, their size and  
all about it?

3 There was wooden pipes  $1\frac{1}{2}$  in bore  
from said spring, when my father  
bought this place. I do not know who  
put them in. Since that time there has  
been a line of pipes kept up continually  
of the same size bore. They would  
rot out and then we would repair  
by having new logs replaced

Ques 4 When did you take possession of the farm  
you now live on, under the deed from  
your father, and please state if you now  
kept up and maintained a line of pipes to  
and from that spring ever since, and



if you answer that you have so kept up said pipes, please state whether or not you have so kept them up under a claim of right?

4

I never did not get into full possession of the Fason until after the death of my Father and he has bin dead 8 or 9 years, I have lived on it for about 35 or 36 years, as above stated. The pipes were in all the time some times logs would rot out and some times the logs would wash out, where the line would cross the branch in several places when this would occur there would be a break in the pipes for a while until I could put them, in the intention was to keep the line in all the time, I have kept them in under a claim of right.

This answer is excepted to so far as it seeks to set up a claim or right as inadmissible, so such claim can be set up except by grant in writing.

Or, for Defts.

ques

5. Did any one ever dispute your right or the right of your father to convey water from said spring in pipes, if so where and when?

5

to one ever disputed the right of  
Father or my self, until this Suit was  
brought

ques 6. Do you at present convey any greater  
quantity of water from said spring than  
was conveyed by the line of pipes your  
father had in, if so how much more?

6 I am not conveying any more I have got  
in the same size pipe ~~the~~ as has  
bin in all the time  $1\frac{1}{2}$  in in bore  
there being about little fall from  
Spring. For a short distance I have in  
two joints of  $4\frac{1}{2}$  in pipes so as  
to start the water in to the pipes  
which is  $1\frac{1}{2}$  inches from there to my  
dwelling house. From there  $1\frac{1}{4}$  in  
a distance and then reduces to 1 in  
at first Hydrant and then smaller.

gues. 7. What was the cost of putting in the line  
of pipes as at present in.

Ans. I cant tell exactly I gess from \$800<sup>00</sup>  
to \$1000<sup>00</sup> I kept no exact acct., From  
the spring to my house it is 1700 to 1800  
ft From my house to the Road that is  
the edge of the Town of Dryden  
is about 1000 ft, and after crossing  
the R. Road there is about 2500 ft of  
pipe if I



ques 8 State the relative costs of the line of pipes from your dwelling house each way?

Ans I cannot state that with any degree of certainty.

ques 9 Please state whether or not the Town of Dryden is located on the farm conveyed to you by your father.

9 All or nearly all

ques 10. Did the complainants know, that you were putting in said line of pipes at the time you were putting them in, if so did they take any steps to stop you or in any way object to your putting them in?

10 They did know that I was putting them in they did not take any steps to stop me from putting them in and raised no objections to me putting them in

ques 11 If I understand you, the line of pipes in and used by your father and yourself before the present line was put in only conveyed the water to your dwelling house, what then became of the waste water, and how did said waste water compare in quantity with the water now conveyed from your dwelling house to the Town of Dryden?

11

The line of pipe formally staped at my dwelling house. The wast water up to that time run out throing a ditch to the main branch same distance south of my house. About the same The old pipes and the new ones. being the same size in bore

gues 12. When were the present line of pipes put in.

12 The one the pipes was put in from 4 to 5 years ago

gues 13. Do you convey water to any point off the Levi Pennington tract of land, if so, on to whose land and how much water is carried off said land?

13 The whole line of pipes lyes on the Levy Pennington land. from my house to the end of pipes ther is one small  $\frac{1}{2}$  in pipe runs across the main road on south side of the Town to water my stock fores out in troft by using a stop cock when to water said stock this land is my land it use to be long to France Iron, and is not a part of the Levi Pennington land.

gues 14. State what land it is where George Pennington uses water for his house and barn

13. Ans It is part of the Levi Pennington home place. Ther is 14 acres of George's land.



ques 15. It has been stated that a well was dug at your home place, when was that done, and why was it done, and in this connection state whether or not you or your father had any intention of abandoning said line of pipes and your right to convey water from said spring?

15- Said well was dug about 12 years ago. It was dug for the purpose of getting cold water for drinking purposes. The water in the pipes was worn, and water witches told me I could get plenty of well water at little cost. The pipes at that time were old and water was not good for drinking purposes. I had no intention of abandoning said line of pipes or my right to convey water by pipes from said spring, and if my father had any such intention I never heard it.

ques 16. State how said spring is now fixed or walled and state whether or not the present arrangement injures said spring or in any way interferes with the use thereof.

Ans 16. The said spring is now walled with brick and cement. I don't consider that waling of the spring injures it.

but quite an advantage to it and then that makes it the spring inside of the wall is from 7 to 8 in deep, the water inside of spring house where they keep their milk is from 3 to 4 in deep and is a fountain with the Peff. so that they have it shallow or deeper as the water is dammed at the lower side of the spring house, by loose Rock sand & gravel for the purpose of damming the water for their benefit

q. 17. State the proportion of water carried off by said pipes.

.. my opinion is that the pipe carries about half of the water of the spring

q. 18. Please state whether or not the quantity of water left is sufficient for purposes of said farm and all the stock it would maintain.

18. I think so and enough for several other farms of the same size

q. 19. How was the head of said spring arranged when the old line of pipes was in, that is before you walled it up?

19. The spring was walled by ruff Rock so that the mud and muddy water would run in and leave it in a bad shape after rains



The present wall does not raise the water <sup>high</sup> than the old wall

q<sup>ues</sup> 20. How are said pipes arranged at your house, in the Town of Dryden. I mean is the water confined in said pipes by stop cocks or are the pipes open and the water allowed flow off freely.

20 I have a small Cock Stop, or globe valve to draw water or to ~~let~~ let water to run in to the Spring house. In the Town of Dryden with hydrants & stop cocks at the end of line of pipes at George Pennington the water runs out on said George Pennington Land

q<sup>ues</sup> 21 At the time you put in said reservoir or wall was it satisfactory to the plain Tiffs, ~~did~~ they express themselves pleased with <sup>it</sup> ~~tell~~ how this was.

complaints seemed to be pleased with what I had done to said spring, until W. D. Orr - junior married in to the <sup>family</sup> planor, and him had some differences on some business & from that time on I could hear of him telling others that he was aiming to give me a law suit & parties told me that he told them that he liberated them to use water for fire free

By agreement and consent was taken  
at the point until sometime after the  
1<sup>st</sup> of June of the circuit court  
and time to be agreed upon by me, Justice  
this the 29<sup>th</sup> day of October 1896.  
Robert H Orr J.

Dryden 7<sup>th</sup> April 29<sup>th</sup> 1897  
Met pursuant to agreement, at Dryden  
you present H. L. Orr as one of the Plaintiffs  
and H. Orr. Attorney for Plaintiffs and  
Elknoch Punnett as Defendant and C. S.  
Hanson his attorney this the 29<sup>th</sup> day  
of April 1897

Robert H Orr J.P.  
Elknoch Punnett witness as Justice  
testified and deposed as follows.

22. Since testifying as above have you had any  
communication with the plaintiffs or either of  
them relative to this suit, and as to the effect  
of said Pipes on said spring if so state  
with whom you had said communication  
and what was said?

I have had several talks with H. L. Orr  
and about our lawsuit. He told me that  
any body could see that the spring was  
not damaged in the least, but that wall  
kept out the muddy water <sup>out</sup> in times of



heavy rains, & he said there was lots  
 of waste water out side of the pipes for  
 any stock that may be kept on said <sup>farm</sup>,  
 he said these words to me as I am his  
 uncle he said uncle baner I am  
 sorry that we ever gave you any trouble  
 & if will orr hadent of got mad at  
 you there would have been no suit  
 brought & that he was going to quit the  
 suit said he had never had any faith  
 in getting any thing of me only by com-  
 promise & then backed Dock & Malcol  
 with & other said & scare what they  
 could out of him

This answer is excepted to because the defendant  
 H. L. Homery has sold out his interest in the tract  
 of land and in the subject matter, since the  
 institution of this suit, to the plaintiff Elizabeth  
 A Orr, and any admission by him can not  
 prejudice the rights of the other <sup>Plaintiffs</sup> ~~defendants~~,  
 any more than an admission from any  
 other disinterested person.

James W Orr, for Defts.

+ Examined You have stated in your examination in chief  
 that your present pipes, you think, cost you  
 from \$500 - to \$1000 - Now is this the nearest  
 you can come to their actual cost?

and

I suppose it is a ~~very~~ <sup>very</sup> ~~much~~ <sup>much</sup> ~~more~~ <sup>more</sup> ~~account~~ <sup>account</sup>. There was considerable ditching to do.

Ques 2.

Did you not tell your sister Mrs Mary E Henry that they had paid you from \$500 to \$600 but that you told others they had more?

Ans.

I never did that I saw no occasion for.

Ques 3.

You have stated that the act made no allusion to coming in the spring and putting in the lines. Did you not first intend to convey the water to Dryden in the R. R. Co. and with that intention talk to Mrs Henry about her and the children giving you the right to do so and did she not tell you that she was not to give such right for less than one thousand dollars, and if she did that the children would give you trouble about it when the time came to use?

Ans.

I undertook to convey water to my house & also to pipe the waste water from my house over to Dryden & thence Dryden to a part of the Levi Pennington Land as to consulting my sister of putting in pipes I have no remembrance of any such conversations but after the pipes were in she said <sup>to</sup> me that she had been told that I ought to give her some of the profits paid by the Dryden People I told her that there was not



any prophet on what had been said me  
by the dryden people & as to her threatening me  
of trouble by her or her children I am positive  
that such a thing was never spoke of. but  
when I told her that I would carry the amount  
of water that had for many years poured out  
in waist at my house over & beyond Dryden  
to parts of the Lake Peninsula Land & that  
I was taking no more water from the  
spring than had been usually taken by  
the former pipes. then she seemed to be  
satisfied & said that I had been a great  
help to her in raising her children & she  
could hardly live without my help.

Does 4. Will you please answer whether or not you  
first hoped or intended to convey the water  
to Irwin for the Rail Road Co?

Ans I had no such aim as to Running water  
for the R.R. Co but as the pipes are out  
in the Commons the R.R. men get water  
as does every body else does so. and it

Tues. 5. Did you not at the suggestion of Capt O'Brien, Chief Engineer, or some other of the R. R. officials propose to connect water for the Fair Road from the spring in controversy not specifically for the R. R. Co. if do not <sup>know</sup> what was said first & last <sup>about</sup> that matter.

Ques 6 I do not want to know what was said about the matter, but want to know if you did not propose to sell the Rail Road Co. a water right, or furnish them water from said spring?

Ans as to what was talked of or proposed I do not remember I suppose Deeds will answer that satisfactorily.

Ques 7 Did you propose to sell or furnish them water from anywhere.

I did not propose to sell them any water from any where, the Depot being on the Levi Burlington <sup>land</sup>, I agreed for them to use water as every body else does from the Hydrants of the pipes in Dryden.

Ques 8. Was this all the right <sup>or privilege</sup> you ever proposed to sell or give the R. R. Co. before or after their road was completed at Dryden.

Ans as well as I remember the R. R. Co. talked of building a water Tank at this Depot at Dryden & ask me to let or grant them a right to the spring for that purpose which I was advised that I did not have the right to do so I did not do so.

Ques 9 Did you not, before you put in your present pipes, tell Mrs. Flanery for the purpose of getting her consent, that you would leave it to the



boys, meaning Whur-gion & Billie Hobbs, as to what part of the hole's she should have on the water to be immersed in. Exposed?

Sus. If there ever was any such conversation I have no recollection of it, I can't see what would bring up such chat as she made no objection to the pipes being put in.

Ques 10. You say the well was dug with no intention of abandoning the pipes, Was not the wooden lines at the time the well was dug and for sometime after, out of use, except from your house to the branch?

~~The as well~~

Sus The pipes may have been bored out ~~out~~ in places as wooden pipes frequently do some times the water wouldn't run all the way, as to the condition at the time the well was dug I do not just remember but I never had any such thought as abandoning the line of pipe first because I needed the water for general family uses to cook with wash with work clothes keep our milk in Milk house <sup>or</sup>

Ques 11 Do you remember any time when the water was conveyed in the wooden lines only from the well to about one third of the way from your house to the spring, and you or your father put a metal strainer on the end of the log at the branch?

Ans 11 it occurs to me that there was a time when  
Lags was coted & masted of in crossing the  
Branch several times & that we had to carry  
our drinking water from spring & kept the  
water <sup>running</sup> from spring branch for all other  
purposes until we could save up & repair  
said line of pipes but as i have all ready  
stated i or we never had any such thoughts  
as getting to use the water by the line of  
pipes but i do not remember of any time  
when there wasent lag pipes in at the spring  
in fact when i went to put in the Iron  
Pipes i took out the wooden pipes which was  
pine lags & just below the spring there is  
now some of the old pine <sup>lags</sup> still under the  
ground joyned to gether, and as to strainer  
over said lags at spring branch i do rem-  
ember but would suppose that we had  
something of the sort to keep trash out,

Ques 12 Was there not as much as a year, or more,  
at a time, that there was no water running  
to the house through the lags except from the  
branch?

Ans 12 i cant remember definately but about think  
it was but a short time for it being a long  
distance to carry water we fixed them  
up as soon as i could be able to do so.



Ques 13. Were not the old pine logs you speak of, logs that were simply left in the ground and not in use, or was the water all the time running through them as when they were first put in?

14 the water was running through them for a short distance when I pulled them out to put in iron pipe, probably about 100 ft

Ques 14. You have stated, in chief, that you had no trouble with the plaintiffs about the water &c, until Wm A Orr Jr. married in the family &c, and that after you and he fell out, you was told by persons that he threatened you with a suit. Now who told you this?

Ans 14 if I might not John Tayler S. E. Dehoke & others generally talking & rizing me about Bill Orr going to Law me.

Ques 15. You have said there is water enough left at the spring to supply several farms. How many do you mean by several?

Ans 15 other good farmers said there was enough water out side of pipes for three or four such farms & think the same.

Excepted to because not responsive as to what others say & not admissible.

Orr, for Plff.

Ques 16 When & where was it that H. L. Flawry said to

you what you say he did in your answer  
to ques "22" in your examination in Chief,  
about the spring &c. (Not making exceptions)  
Ans 16. i. and he had several long talks at different  
places ~~between~~ & at different times  
shortly after the injunction <sup>was</sup> refused for  
The Plaintiffs we had a long talk on my walk  
that leads from Debat to my house, and  
several times in Deyden before he had  
sold out his inst in said Land, which  
The spring is on ~~it~~ he told me on its  
walk that Judge Orr wanted, to see  
me on business about the suit said he  
did not suppose that they would give me  
any more trouble but that we are going to  
pull old Dock Mator for all that we can  
This answer is excepted to, in so far as not respon-  
sive, and because it develops that the talk,  
if any, was in reference to a compromise.

Ans. for Deft.

And further this witness saith not.

Elkanah Purinton.

George H. Purinton another witness  
of lawful age being duly sworn depo-  
ses & says.

Ques. 1. State your age and residence?



21

Ans. I am 30 years old. Live at Dryden  
Virginia

2. State your relationship to Elkanah  
Punnett the Defendant in this case  
also your relationship to the late Levi  
Punnett deceased?

Ans. I am a half brother to Elkanah and  
a son of Levi Punnett deceased.

3. Please state if you are acquainted  
with the homestead of Levi Punnett  
The farm owned by Thomas Flannery  
at the time of his death and the spring  
on said farm. if so how long have  
you known them.

Ans. I am acquainted with said farm and spring  
and have known them all my life.

4. Please state whether or not there is  
now a line of pipes which carries  
water from said spring, how long  
said line of pipes have been in and  
whether or not before the present  
line of pipes was put in and car-  
ried water from said spring, if so  
state how long you know said  
pipes to be in and to what point  
water was conveyed by them.

Ans. There is a line of pipes which carries  
water from said spring to Elkanah.

Pumington's house and thence to the town of Dryden. The present line of pipes has been in about five years. before the present line of pipes were put in there was another line of pipes running from said spring and conveying water from there to the dwelling house formerly occupied by Levi Pumington. The same house where Elkanah Pumington now lives. The last named line was in when I can first remember.

- 5 Was there any time before the last line of pipes were <sup>put</sup> in that the taking of water from said spring in pipes for use at the Levi Pumington house farm was abandoned or given up.

Ans. There was one time when water was carried from the branch below the head of the spring. This was about from 7 to 9 years ago.

- 6 What was the cause of conveying water from the branch instead of from the head of the spring and how long did that condition continue.

Ans. My recollection is that the pipes had given out and were leaking badly and



my brother Elcanah had dug a well at his house and he concluded that the well would produce water sufficient for drinking purpose and the water from the branch could be used for stock and washing purposes.

That condition only lasted a short time. my impression is something like a year, we then hauled red cedar logs from Goff Sprueller had them bored and repaired the line of pipes. The pipes were taken from the head of the spring. There was only a break in them at the branch.

7. Was this in the lifetime of your father or after his death.

Ans. It was along about the time of his death, partly before and partly after, as I remember.

8. Was the right to carry water from spring ever abandoned, surrendered, or given up by your father or by the said Elkanah.

Ans. No. That I had any knowledge of

9 Please state the present condition of said spring, its condition during your father's lifetime, and whether or not

The present arrangement at said spring is better or worse for the present use of it by the present occupants of said farm, than it was when the old line was in, in the lifetime of your father?

Ans The spring is fixed up better now than it formerly was. It is walled up better and is <sup>in</sup> a cleaner and better shape.

10 Please state whether or not said spring is a large and bold running spring and if you answer that it is, please state about the proportion of water that is conveyed away from it in pipes

Ans Said spring is a very large and bold running spring. I hardly know how to answer as to the proportion but my best opinion is that at no season is there more than one half of said water carried off in pipes

11. Please state whether or not there is left, after conveying away in pipes what is conveyed, water sufficient on said farm for family, stock, and farm purposes for the usual uses of said farm and the stock it will maintain.



25  
Ans. There is and has always been plenty left at every time I ever saw to.

12. On what farm is the town of Dryden located?

Ans. On the Levi Pummington farm, conveyed by him to Elkanah Pummington.

13. You have stated that before the present line of pipes were put in, that water was conveyed in pipes to the house place of your father, state the size of the bore in said pipes, and in the same connection state whether or not the old line of pipes conveyed all from said spring more or less water than is now carried from it.

Ans. When I can first recollect the pipes in were pine and oak and the bore in them or in most of them was worn & from an inch and a half to two inches in diameter. We then had cedar pipes bored. The bore in these was  $1\frac{1}{4}$  in diameter, and we took the old logs with the worn bore and re-bored them and set them at the head of the spring, and the new logs for the down or at the house end. I am of opinion that the water conveyed by said

Two lines of pipe were about the same. I know that when the water was conveyed to the house that it it was then conveyed to a trough for stock water that it then ran off in a branch through the small meadow below the house to the branch. When the lot was in meadow was not in grass there was a channel about where the wall now is along which the water made its way to the branch. He could turn it either way.

14 Please state whether or not the farm of the Plaintiffs is in any way injured by the present line of pipes and the water that they convey away from said spring.

Ans Not that I can see.

+ Examined You say that the farm of plaintiffs is not injured that you can see, is it injured - benefited?

Ans 1 I suppose he is the use of the water.

Ques 2. What is the size of the present pipes at spring, and generally?

Ans 2. My recollection is that the present pipes are 2 inches up next to the head. They may be larger one at the head but I have not noticed.

Ques 3 If there are two joints at the head, the first



and 4 inches in the next 3 inches, would this  
not tell and force more water than if  
the lines were only 2 inches all the way?  
Ques 3 It would rise to greater head way and pressure.  
Ayes 4 Have you in fact observed closely the con-  
dition at the head of the spring since the present  
pipes were put in?

Ayes 4 Yes I have been at the head of the spring  
several times.

Ques 5 Have you observed the ditches made by the  
defendant on the north and south side of  
the spring when he put in the present pipes.

Ayes 5 I don't know that I have.

Ques 6 In its present condition, should mud or insects  
get in the head of the spring as it now is, would  
they have the same chance to wash out  
get out as before?

Ayes 6 I don't remember how it is fixed as to drain-  
ing as it was before it was walled or  
dammed with rough rock & not cemented.  
And further this deponent says that not

Witness claims 1 day .50

G. W. Pennington

Harvey Rivers another witness of  
lawful age being duly sworn says:

1. Are you acquainted with the form of  
the plaintiffs, the form formerly used

by Levi and now by Elkanah Pennington  
and are you acquainted with the  
Spring on the farm of the Plaintiffs, if  
you state that you are please state  
how long you have known them?

Ans. I am acquainted with said forms  
and Spring and have known them  
for about 15 yrs.

2. If you ever lived on either of said  
forms please state which one, when  
it was and how long you lived on it.

Ans. I lived on the farm now owned by  
the Plaintiffs, this was in the lifetime  
of Thomas Flanory who then owned  
it and was some 12. or 14 yrs. ago  
I have also lived with Elkanah Flanory  
on his farm where he now lives.

3. Please state what kind of Spring is on  
the farm of the Plaintiffs.

Ans. The Spring is a tolerably large cold  
running Spring.

4. Please state whether or not there  
was at the time you lived on said  
farm of the Plaintiffs, a line of pipes  
laid from said Spring, and if so to  
what point they conveyed water  
and if there was enough water left



for farm and family purposes?  
Ans. There was a line of pipes there then and has been ever since I know the place said pipes conveyed water down to the Levi Pennington house place. There was plenty of water left for family and farm purposes.

5- Please state if you know which conveys most water from said spring the pipes that are now in or the pipes that were formerly in?

Ans. I do not know the size of the pipes now in the head of the spring

3- I should not think there is much difference, as I see no difference in the amount of water left or wasted there <sup>now</sup> and formerly. There is plenty wasting there now and there was plenty wasted there then.

6 How was the head of said spring arranged or fixed when the old line was in and how is it now arranged

Ans. When the old line of pipes were in the head of said spring was better walled up with loose rock, and now it is walled up with brick cemented and fixed very nice.

7 Which of the walls the old or the new afforded best protection to avoid spring from mud or surface water?

Ans. The new wall.

8 Does the new wall improve or injure said spring, in way of convenience for family use.

Ans. I think it considerably improves it.

9 It is claimed that the new wall sometimes causes the water to raise so high in the Spring house as to overturn the mill, can you explain how this is, and in this connection show state if there is any reason why mill would be more liable to be overturned by water in the new than the old wall?

Ans. I have not been inside the Spring house since the new wall was made and I think the mill overflowing depends on the nature of the damming at the lower end of the Spring house and this <sup>is</sup> ~~is~~ arranged by the users to make the <sup>water</sup> deep or shallow as desired as the wall at the lower end is not cemented. And is loose rock and sand or was at the time I was in it



10 During the time you lived there did you ever hear Mr. Flannery or his wife make any complaint about the conveying of water in pipes from said spring

Ans I never did that I remember.

11 Before water was conveyed from <sup>To The Town of Bryden</sup> Okanah Pinnigton's house, what became of the waste water at said Pinnigton's house

Ans It ran first into a trough for his stock then ran off through his enclosure to the branch.

- Ques 1 I believe you say you do not know the size of the present lines, do you remember the size of the old lines?

Ans 1. I guess the old ones were  $1\frac{1}{2}$  in or more from being worn.

Ques 2 Do you remember a time that the old lines only ran from the branch to the house?

Ans 2. Yes Sir, there was a time that they only ran from house up the branch a piece.

Ques 3 When was this and for how long did it continue?

Ans 3 It was at the time the well had a new dug, and thought the well would supply his drinking water and ran the other for his stock, from the branch. This continued

for a year or more, I cant state exactly how long.

Remained

- 1 Would you make any difference if you owned said farm in having said spring well as it is and the water carried away in pipes as it is, and if the spring was in its natural state if so which would you rather have it?

Ans As to the well around the spring that is all right, and there is always plenty of water there and I dont know that I would make much difference.

Re + Exand. If you owned the Flavery farm, and the spring in Contramery, and we are had the right to divide the water at the spring with you sell it to others, would you not think yourself entitled to the proceeds and what difference would you then make?

Ans 3. If no one had such right I would not want the pipes put in, and I would think I was entitled to Compensation if they were. And further this deponent saith not.

Witness 1 day.  
50 cts.

Very X

until tomorrow at same place.

R W Orr J P



Met pursuant to ed. summons this 30<sup>th</sup>  
day of April 1897. Present same parties  
and attorneys as on yesterday.

R. W. Orr J. P.

1. D. L. Jesse another witness of lawful  
age being duly sworn deposes & says:  
Are you acquainted with the tract of  
land formerly owned by Levi Pummington  
walled his house place, the for in owned  
by Thomas Flannery at the time of his death  
and the spring on the east named for  
if so how long have you known them?

Ans. I am acquainted with both farms and  
the spring, have known them for 20 or  
25 years. My brother George & Jesse  
formerly lived on the Thomas Flannery  
farm.

2. Please state the condition of said  
spring when you first knew it, whether  
or not water was conveyed in pipes  
from said spring, if so where was it  
conveyed to.

Ans. I do not remember how it was then  
walled, I remember that it was a good  
large spring. Water was then conveyed  
from said spring in wooden pipes  
to the house of Levi Pummington on his  
house place.

3 At that time was there water left sufficient for farm and family purposes on said farm.

Ans. I do not remember anything in reference to the amount of waste water then left there.

4 Have you recently examined said spring, if so state when it was, and state the conditions in which you found said spring?

Ans. I examined said spring recently, in October last I think. The spring is in fine condition as I look at it. It is walled around with a good wall & measured the water in the head of the spring and think it was 7 inches deep, though as to this my recollection is not positive. I measured the water inside of the wall in the spring house but do not now run under the depth.

5 At the time you examined said spring please state if there was water sufficient left and flowing out side of the pipes for farm and family use on said farm?

Ans. Yes Sir plenty as I looked at it. There was a right smart branch running off in water and this as



well as I remember was in a  
time of low water.

And after this is read with out.

L. L. Jesse

George C. Jesse another witness of lawful  
age being duly sworn deposes & says.

- 1 No you know the farm formerly owned by  
Thomas Flanory, and ~~now owned~~ by the  
plaintiffs in this suit or some of them, if so  
how long and how well have you known it.

Ans

I have known said farm, for 20 years  
I lived on said farm for two years.

- 2 Please state what kind of spring is on  
said farm. The condition said spring  
was then in, if walled round it was walled  
and whether or not there was then a  
line of pipes which conveyed water  
from said spring.

Ans

It is a fine cold spring. It was not  
walled when I lived on said farm. There  
was then a line of pipes which conveyed  
water from said spring to the Levi P  
erry's place, where Elkanah P  
erry now lives.

- 3 Please state if you know the size of  
the bore of said line of pipes.

Ans

I do not know.

4 Was there water enough left outside of said pipes for farm and family purposes on said farm?

Ans. There always was for me.

5 How you recently examined said spring if so where was it, and what kind of condition did you find said spring in.

Ans. I examined said spring in October last as I now remember. I found said spring walled up with bricks. as I remember the basin walled around is 6 feet long and 3 feet wide. I measured the depth of water in said basin, and I recollect it was deeper at some points than others I think I found one place 10 inches deep the average depth I think was about 7 inches. There is a spring house built at the lower edge of said basin. I think the upper wall of said spring house runs a little above the lower end wall of said basin. I do not know the size of the spring house. I also measured the water in the spring house and found it to be about 3 inches to  $3\frac{1}{2}$  inches deep. There was a line of pipes running away from said spring this line of pipes starts from a point in said basin just above the upper wall of said spring



house.

- 6 Please state whether or not there was ~~water~~ at the time you examined said spring last fall, water left outside of said pipes sufficient for farm and family purposes on said farm.

Ans Yes Sir, there was plenty, I examined the branch below, and found plenty of water.

7. Please state if you examined it, now the the lower wall of the spring house is arranged, with reference to drawing water into said spring house?

Ans My recollection is that the bottom log is just above the water a little distance and that there is no solid wall under said log, but that you can with your hand rake out the sand and gravel so as to make the water deeper or shallower as in the spring house, as you see fit.

- 8 Is the condition of said spring at this time, better or worse than it was, when you lived there 20. or 22 years ago and give your reasons for saying so.

Ans It is in better condition. When I lived there, there was no wall around said spring, and then the branches and surface water in time of rain would

flow into it. Now it is walled up with a neat wall which protects it, as I think from this overflow of surface water and it looks a great deal better.

3 9 Please state the size of said farm its character as to fertility and about the amount of stock, that is horses and cattle that could be profitably kept on said farm, if prudently managed.

Ans I do not exactly remember the acreage of said farm but think it contains 115 or 120 acres of which some 50 to 60 acres is cleared. It is thin land. When I lived on said land I kept on it as much stock as I thought could be kept there profitably. I kept from two to three horses about 3 Milch cows and usually fattened 8 to 10 hogs per yr.

10 How far from the head of said spring to where <sup>the branch runs from</sup> it enters the Hobbs branch, and how far from the junction of said branches to where the water in said branch passes entirely away from said Flunoy land.

Ans About 60 to 75 feet I guess though I never measured it, and from the junction of said branches to where they leave said land I would think is 150 or 200 yds.



And further this defendant says to the  
witness claims 1 day 50. L. C. Jesse

John W. Scott another witness of lawful  
age being duly sworn deposes & says

1 Do you know the land on which the  
plaintiffs reside, if so how long have  
you known it. And if there was ever  
a line of pipes put into the spring to  
convey water therefrom state as  
nearly as you can when this was  
done and where the water was con-  
veyed to?

Ans

I know said farm, how long it  
30 years or more, I live some 3 miles  
from said land. There was line of pipes  
put into by Levi Pennington to convey wa-  
ter from said spring to his house but  
I do not know how long ago this was.

2

How you examined said spring at any  
time recently, if so state the condition  
you found it in. State fully all about  
the size and location of said spring

Ans.

I was at said spring sometime ago. I found  
it in fine condition. It is a large cold  
spring affording plenty of water. There  
is a line of pipes starting from the  
head of said spring and conveying

also southward to Elkhorn Pennington  
and thence on to the lower of Dryden.  
There is plenty of water left after con-  
veying away what is taken by said pipes  
for farm and family purposes.

I speak of the conditions at the time I  
was there I don't know whether it gets  
any lower than it was when I was there.  
It was then a pretty dry time

Q What would you judge to be the volume of  
water left there, or that is not conveyed  
in said pipes, give the size of a pipe you  
think it would fill.

Ans. I think there ~~would be~~ water enough  
left to fill pipes as large as those  
that are now in. In other words  
I do not think the present line of  
pipes carries away more than  
half the water afforded by said spring.  
And further this depends quite not.

Cutlass. 1. Day 50. . . . . W Scott

The foregoing deposition of ~~Elkhorn~~ ~~Pennington~~ ~~Dryden~~  
Elkhorn (Guinn) ~~Pennington~~ ~~Dryden~~ ~~Harvey~~  
Rivers, J. L. Lussie, G. B. Lussie, & John W. Scott  
were taken & verified & seen and to before me  
at the time and place and for the purposes in & to  
attest the truth of this April 30th 1877.

Robert W. Orr, J. D.

7.50



Elkanah Pennington

ads { Depo 1.

A. L. Maury et als.

Filed May 4th 1877

A. B. Munsey Clerk

Ernest Bryant.  
Elkanah Pennington.  
George W. Pennington.  
Henry Rivers.  
J. L. Vessel.  
J. L. Vessel.  
John W. Scott.

-----  
H.L.Flannery et als

Plaintiffs.

vs.

In Chancery.

Elkanah Pennington,

Defendant.  
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Affidavit of G.W.Pennington.  
-----

I am a son of the late Levi Pennington, deceased. I am now 29 years old. I was born as I am informed on the Levi Pennington home place and I lived there until I was about 24 years old. My father had a line of wooden pump logs running from the spring on the Bridges place to ~~the~~ his residence on the home place from the time I can first remember up to the time he sold and conveyed said home place to my brother Elkanah Pennington, which I see from the deed was August 6th 1872, immediately the date of said deed & Elkanah Pennington took possession of said land and he continued said wooden pipes up to about the year 1891 when he took them out and put in a line of iron pipes. Up to the time said iron pipes were put in the water was conducted only to the dwelling house on the home place. There it was turned loose and ran in a branch through a small meadow down to where it passes into the branch. After the iron pipes were put in the ~~water~~ water in excess of what was used for family purposes was conducted on to the town of Dryden and there used by various persons. The wooden pipe at the head of the spring had as I remember a 4 inch bore for about 16 to 20 feet, then the pipes were two inches in bore for a distance of some 200 yards, then from there on to the house the bore was 1 1/2 inches as I remember. I am certain it was not less than 1 1/4 inches. My father always asserted the right ~~to~~ after the conveyance to my brothers William and Elkanah to conduct the water by said line of pipes to his home place. Elkanah Pennington after he became the owner of said tract of land asserted the same right. and he exercised that right openly, continuously, and notoriously up to the time I left said place about 5 years ago, and I see that he is still asserting it. I have noticed said spring carefully recently. I have noticed the amount of water that



is carried by the present by the present line of pipes, and I am certain that said spring is in no way injured for farm and family purposes and I do not believe there is any more water conducted by the present line of pipes than there was by the old wooden line put in by my father and maintained by my brother until the iron pipes were put in as aforesaid. The head of the spring has been very much improved by the reservoir or basin erected around it. I do not believe that said pipes in the lowest time of water carries more than one half of the water from said spring. I know that they do not diminish the supply of water so as to injuriously effect the place owned by said complainants.

G. W. Huntington

Subscribed and sworn to before me on this, the 11th day of November 1895.

A. B. Munsey, Clerk

1840  
15 1/2  
3  
of to W.  
Admiring  
Annual Review

Clerk 25-



H.L.Flanary etx als.

Complainants.

vs.

In Chancery.

Elkanah Pennington,

Defendant.

Affidavit of George C.Jessee.

I, G.C.Jessee, do solemnly <sup>swear</sup> that I am well acquainted with the spring situated on the tract of land described in the plaintiff's bill in this case as the Bridges tract, I lived on said tract of land two years while it was owned by S.C.Stallard, at that time Elkanah Pennington had a line of pipes leading from said spring to his home. I do not know the bore of said pipes. Said line of pipes in no way interfered with the use of said spring for family purposes. Said line of pipes did not diminish the supply of water to the injury of the said spring for farm purposes. I have been at said spring very recently. I find that Mr.Pennington or some other person has erected around the head of said ~~spring~~ a brick wall laid down in cement which is about three feet by seven feet, which is a very great improvement on said spring over its condition when I lived there. I noticed said spring carefully, the water at the head of said spring where it is used for family purposes is about eight inches deep and the flow from said spring is about the same now that it was when I lived there. There is an abundance of water running off in waste to supply the farm with a great deal more water than is necessary. Said branch only runs from 100 to 150 feet until it enters another branch which I understand to be the line between said Bridges tract and the tract of land owned by Shelby Hobbs. The two branches then flow along in the same channel as the boundary line between said Hobbs tract and said Bridges tract for some two hundred yards; they then enter upon the old France Zion tract of land which is now owned as I am informed by C.D.Orr, and after passing over that land for a short distance said branch runs onto the lands of Elkanah Pennington. Said branch then for some distance forms the boundary line be-

tween the old France tract and the Levi Pennington home tract for  
for some distance, It then flows onto the Levi Pennington  
home tract for a few yards and sinks.

*G. C. Jones*  
Sworn to before me this the 11th  
day of November 1895.  
A. B. Munsey Clerk



Journal  
of the  
Globe  
Admiral Perry

Q 25<sup>th</sup>

JAMES W. ORR,  
JUDGE COUNTY COURT.

G. W. BLANKENSHIP.

ORR & BLANKENSHIP,  
ATTORNEYS AND COUNSELORS AT LAW.  
COLLECTIONS A SPECIALTY.

COURTS: LEE, SCOTT AND WISE COUNTIES, VIRGINIA; COURT  
OF APPEALS, WYTHEVILLE, VIRGINIA; UNITED STATES  
COURT, ABINGDON, VIRGINIA.

REFERENCES:

POWELL'S VALLEY BANK, JONESVILLE, VA.  
PENNINGTON'S GAP BANK, PENNINGTON GAP, VA.  
DOMINION NATIONAL BANK, BRISTOL, VA.-TENN.

Jonesville, Virginia, ~~May 1st 1897~~ ~~XXXXXXXXXXXX~~

----This is to certify that my husband, Thomas ~~F~~. Flanary, deceased,  
died on the 12 day of April 1884, and that the dates of  
the ~~be~~ births of our children are as follows, to wit: H. L. Flanary  
was born on the 30 day of September 1871; that Elizabeth A.  
Orr, nee Flanary was born on the 25 day of September  
1874; that Rebecca A. Flanary was born on the 24 day of Dec-  
ember 1877. Given under my hand, this the 6 day  
of May 1897.

Mary E Flanary

Sworn to and subscribed  
in my presence  
the 6<sup>th</sup> day of May 1897  
M. J. Orr  
Notary Public



H. L. Flannery et al.

vs. J. H. Hight of Polly  
Flannery

E. (Perrington).

Filed as evidence  
by Consent, May 15<sup>th</sup>  
1897.

C. T. Duncan, etc,

for Defendant,

James W. Orr, atty  
for Plffs.

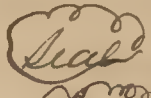

No 3

with A. H. Hight.

This deed made, the 24<sup>th</sup> day of April 1867,  
between Levi Pennington & Amanda F. Pennington  
his wife, of the County of Lee, and State of Virginia  
of the first part, and William Pennington and  
Eckanah Pennington of the County and State  
aforesaid, of the second part, witnesseth, That  
the said Levi Pennington and Amanda F. his  
wife, in and for the consideration of the sum of  
two thousand dollars to them in hand paid, the  
Receipt Whereof is hereby acknowledged, the said  
Levi Pennington and Amanda F. his wife, hath  
this day bargained and sold, and doth convey  
unto the said William and Eckanah Pennington,  
a certain tract or parcel of land lying and being  
in the said County of Lee, containing two thousand  
and thirty five acres be the same more or less,  
and bounded as followeth to wit: - Beginning  
on the North side of a brushy ridge on a Ches-  
nut, White oak, and Dogwood thence N 21 W 46  
poles to a black oak ~~thence~~ in a Sink hole, thence  
S 85. W 10 poles to three white oaks on a spur of  
said ridge, thence N 35 1/2 W 90 poles to a pine  
near the top of said ridge, thence N 53. E 240  
poles to two Chesnuts + a pine, thence S 35 1/2 E.  
50 poles to a forked Chesnut oak, thence S 50  
W 10 poles, thence with the old original line  
to a pine, Chesnut + black oak on a spur  
of said ridge, thence S 30 E 80 poles to rock  
in the edge of a branch between two springs,  
thence down said branch 28 poles, with the  
meanders thereof to beeches, thence leaving  
said branch S 44 W 32 poles to a double ~~thence~~



White oak near a top of a ridge, thence S 44  
W 40 poles to a black oak. & 2 Souir woods-  
thence a strate line to a pine and black  
oak on the top of a ridge, thence S 73 W 137  
poles to the beginning, it being the same land  
that the said Levi Pennington purchased of  
James B. Briges; the said Levi Pennington res-  
erves to himself full of privileges of water on  
the above conveyed lands for the use of the  
place he now lives on forever, and also the  
use of timber so long as he lives, and the said  
Levi Pennington also reserves the present crop  
for his own benefit, and the said Levi Penning-  
ton and Amanda F. his wife doth Covenant  
with the said William Pennington and Esauah  
Pennington that they will warrant generally  
the lands hereby conveyed, the above described  
land stands good and for its purchase money  
not paid for. witness the following signa-  
tures and Seals.

Levi Pennington   
Amanda F. Pennington 

Lee County, to wit:

I John Reason ~~as~~ Justice of the  
peace for the County aforesaid, in the State  
of Virginia, do certify that Levi Pennington  
whose name is signed to the writing above,  
bearing date on the 24th day of April 1867, has  
acknowledged the same before me in my County  
aforesaid Given under my hand this 26th, day  
of April 1867.

John Reason JP



Lee County Court:

We, John Reesor and George W. Young, Justices of the Peace for the County aforesaid, in the State of Virginia, do certify that Amanda F. Pennington, the wife of Levi Pennington, whose names are signed to the writing hereto annexed, bearing date the 24th day of April 1867, personally appeared before us, in the County aforesaid, and being examined by us privily and apart from her husband and having the writing aforesaid fully explained to her, she, the said Amanda F. Pennington, acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it. Given under our hand this, the 26th day of April 1867

John Reesor J.P.

George W. Young J.P.

Lee County Court Clerk's Office, the 30th day of November 1867. The foregoing Indenture of bargain and sale for land between Levi Pennington & wife, of the one part and William Pennington & Elkanah Pennington, of the other part, all of the County of Lee and State of Virginia, being duly stamped, is admitted to record upon the certificate of two Justices of the Peace in and for the County and State aforesaid.

Teste John B. West Clerk

A Copy

Teste: S. J. Richmond Clerk



Levi Pennington wife

To { Deed

William & Elkanah Pennington

Recorded in Deed B.

15. Page 748

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to 1.

copied

This Deed made October the 27<sup>th</sup> 1870  
between William Pennington & Elkanah  
Pennington of the one part and William  
Yeary of the other part all of the County of  
Lee and State of Virginia, Witnesseth  
the said William Pennington & Elkanah  
Pennington for and in consideration of  
the sum of one thousand dollars to them  
in hand paid the receipt whereof we  
do hereby acknowledge hath this day granted,  
bargained, sold and delivered unto the  
said William Yeary a certain tract or  
parcel of land containing by estimation  
one hundred & twenty & a half acres  
more or less lying and being in the  
County and State aforesaid on the South  
side of the Presha Ridge and bounded  
as follows to wit: Beginning on two Pines  
& Black Oaks a corner to Francis Jions  
land thence N 14 N. 12 W to a rock in a  
line of James Parsons all so a line  
of the land conveyed conveyed by  
Levi Pennington to his sons William &  
Elkanah Pennington N 53 E with said  
line 73 poles to two chestnut-oaks & pine  
on the south side of the Poor Valley Ridge  
thence S 35 1/2 E 50 poles to a double chestnut  
Oak & a double white oak, On a steep hill  
side S. 50 N. 10 poles to pine chestnut & black  
oak on a spear of said Ridge thence S 30 E 86  
to a rock in the edge of a branch between  
two springs, thence down the side



branch 20 holes with the several meanders  
thereof to two Beaches thence leaving the  
branch S. 44 N 32 holes to a double white  
oak over the top of the Beechey Ridge  
thence S. 44 N 40 holes to a black oak & 2  
sower woods thence westwardly to the  
beginning, it being a part of the same  
land that William Zion sold to William  
P. Davidson & Davidson sold to James B.  
Bridges & James B. Bridges to Levi Pennington  
& Levi Pennington to his sons William &  
Elkanah Pennington & William & Elkanah  
Pennington to William Geary to have and to  
hold the said tract or parcel of land, the  
said William & Elkanah Pennington binds  
themselves heirs &c to warrant and defend from  
all persons forever, Witnesseth the following  
signatures and seals.

Elkanah Pennington   
William Pennington 

Lee County Virginia

I Larkin Healdson a justice of the  
Peace of the of the County State aforesaid do  
certify that William & Elkanah Pennington  
two names are assigned to the writings  
above or her too annexed bearing date on the  
29 day of October 1870, have acknowledged the same  
before me in my County and State aforesaid,  
Given under my hand this 29 day of October  
1870,

Larkin Healdson J.P.

Lee County Court, Clerk's Office the 16<sup>th</sup> day of January 1871

The foregoing Indenture of bargain & sale for  
land between William Pennington & Elzavah  
Pennington of the first Part, and William Yeary  
of the second part, all of Lee County Virginia  
being duly stamped is admitted to record  
upon the certificate of a justice of the peace  
in and for the county and State aforesaid.  
Teste James M. Orr Clk

A Copy -  
Teste: J. W. Richmond clerk



William & Elkanah Bingham

To { Ded Copy  
William Yeary  
Recorded in Ded.

Book 16

Page 194

C

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2

This Deed made March 18<sup>th</sup> 1871 between  
William Yeary & Rachel Yeary his wife, of  
the one part; and S. C. Stallard, of the other  
part; all of the County of Lee and State of  
Virginia Witnesses, the said William Yeary  
and Rachel his wife, for and in considera-  
tion of eleven hundred dollars, to them in  
hand paid the receipt whereof we do hereby  
acknowledge hath this day granted, bargained  
and delivered unto the said S. C. Stallard,  
a certain tract or parcel of land containing  
by estimation one hundred & seventy one  
acres, more or less, lying and being in  
the County and State aforesaid on the Brushy  
ridge and bounded as follows to wit:  
Beginning on two firs and black oak, a cor-  
ner to Francis Gion's land thence N 14 W,  
122 poles to a rock in a line of James Parsons,  
also a line of the land conveyed by Levi  
Tunington to his sons William & Ed Hannah  
Tunington N 53 E with said line 73 poles  
to two Chestnut-oaks & pine, on the South  
side of the Poor Valley Ridge, thence S 35 1/2 E  
50 poles to a double Chestnut-oak & a double  
white oak on a steep hill side S 50 W 10 poles  
to a pine, Chestnut & Black <sup>oak</sup>, on a spur of  
said ridge, thence S 30 E 86 poles to a rock  
in the edge of a branch between two Springs,  
thence down said branch 28 poles, with  
several meanders thereof to two beeches,  
thence leaving said branch S. 44 W 32 poles  
to a double white oak, near the top of the



Crusky Ridge, thence S 44 N 40 poles to a black  
oak & into Sowerwood, thence westerly to the  
Beginning, it being a part of the same.

And William Zion sold to William P  
Davidson & Davidson sold to James, P.  
Bridges & James, P. Bridges to Levi Pen-  
nington & Levi Pennington to his sons  
William & Elkanah Pennington & William  
& Elkanah Pennington to William Yeary  
& William Yeary to S.C. Stallard to have  
and to hold the said tract or parcel of land,  
the said William Yeary & Rachel Yeary, his  
wife, bind themselves, heirs &c to grant and  
defend from all persons forever.

Witnesseth the following signatures & seals,

William Yeary <sup>mark</sup> Seal

Rachel Yeary <sup>Seal</sup>

O.S. Be it understood that Levi Pennington  
is to have a privilege of a water right to the above  
mentioned Spring,

Lee County Virginia. I Larkin Herndon,  
a Justice of the Peace of the County & State  
aforesaid, do certify that William Yeary,  
whose name is assigned to the writings is  
hereto annexed, bearing date March 8, 1871,  
has acknowledged the same before me in  
my County & State aforesaid, Given under my  
hand this March 18th 1871,

Larkin Herndon J.P.

Lee County, to-wit: we Larkin Herndon



Daniel S. Reesor, Justice of the Peace in &  
for Lee County in the State of Virginia, do  
certify that Rachel Yeary, the wife of William  
Yeary, whose names are signed to the writing  
hereto annexed bearing date March 18<sup>th</sup> 1871,  
personally appeared before me in the County  
aforesaid, and being examined by us privately  
and apart from her husband, and knowing  
the writing aforesaid fully explained to  
her she, the said Rachel Yeary acknowl-  
edged the said writing to be her act and  
declared that she willingly executed the  
same & does not wish to retract it; Given  
under our hands this March 18<sup>th</sup> 1871.

Larkin Herndon J. P.  
D. S. Reese J. C.

Lee County Court, Clerk's office the 18<sup>th</sup> day of  
March 1871.

The foregoing Indenture of bargain  
and sale for land between William Yeary  
and Rachel Yeary, his wife, of the one part,  
and Samuel B. Stallard, of the other  
part, all of Lee County, State of Virginia  
being duly stamped, is admitted to record  
upon the certificate of two acting Justices of  
the Peace in & for the County & State aforesaid  
Teste: Jno. B. West - D. Clerk

A Copy -

Teste: S. V. F. Richmond Clerk



Crusky Ridge, thence S 44 N 40 poles to a black  
oak & live Sowerwood, thence westerly to the  
Beginning, it being a part of the same.

And William Gion sold to William O  
Davidson & Davidson sold to James B.  
Bridges & James B. Bridges to Levi Pen-  
nington & Levi Pennington to his sons  
William & Elkanah Pennington & William  
& Elkanah Pennington to William Yeary  
& William Yeary to S.C. Stallard to have  
and to hold the said tract or parcel of land,  
the said William Yeary & Rachel Yeary, his  
wife, bind themselves, heirs &c to warrant and  
defend from all persons forever.

Witnesseth the following signatures & seals,

William Yeary <sup>mark</sup> Seal

Rachel Yeary <sup>mark</sup> Seal

P.S. Be it understood that Levi Pennington  
is to have a privilege of a water right to the above  
mentioned Spring,

Lee County Virginia. I Larkin Herndon,  
a Justice of the Peace of the County & State  
aforesaid, do certify that William Yeary,  
whose name is assigned to the writings is  
hereto annexed, bearing date March 8, 1871,  
has acknowledged the same before me in  
my County & State aforesaid, Given under my  
hand this March 18th 1871,

Larkin Herndon J.P.

Lee County, to-wit: we Larkin Herndon

William & Rachel Gary  
To Wm Co.  
S. H. Hallard  
Recorded in Deed  
Book 16. Page 264  
S. F. Richmond

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C



This Deed and contract made and entered into this 6th day of August 1872 between Levi Pennington of the first part, and Elkanah Pennington of the second part, both of the County of Lee and State of Virginia Witnesses, That the said Levi Pennington for and in consideration of the sum of twenty five hundred dollars, hereafter to be paid to him by the said Elkanah Pennington & subject further to the conditions hereinafter recited doth by these presents grant bargain, sell and convey unto the said Elkanah Pennington a certain tract or parcel of land lying and being in the said County of Lee being the same land on which the said Levi now lives containing one hundred & twenty acres be the same more or less, being the same land conveyed to him by James F. Muncy and wife by Deed duly recorded in the Clerk's office of Lee County, and bounded as follows, to wit: Beginning at a white oak and gum on Cox's branch thence S. 23 E 30 poles to a forked tree on the west side of said branch, thence S 27 E 13 poles to the point of an island in said branch thence down said branch with the meanders thereof to the bridge near where the said branch sinks thence S 28 E 59 poles to a stake in a lane, thence N 67 E 4 poles to a stake thence S 32 E 16 poles to a black oak by the side of the big road, thence N 67 E 20 poles to a stake thence S 27 E 21 poles to a white oak



the original line, thence  $S 76^{\circ} E 80 \frac{1}{2}$  poles  
to two white oaks corner between the said Levi  
and John Pennington, thence  $N 2 N 17 \frac{1}{2}$  poles  
to two host oaks on the original line, thence  
 $S 74 \frac{1}{2} N 70$  poles to a Dogwood, thence  $N 5^{\circ} E 7 \frac{1}{2}$   
poles to two Dogwoods and a white oak and  
thence  $S 76^{\circ} N 107$  poles to the Beginning, To  
have and to hold the said tract or parcel  
of land unto the said Elkanah Pennington  
& his heirs forever and the said Levi Pennington  
covenants that he will warrant generally  
the land hereby conveyed, subject to the  
conditions hereafter mentioned, And the said  
Levi Pennington having heretofore conveyed  
a tract of land to his two sons William &  
the said Elkanah and reserved in the  
Deed making said Conveyance the right  
to the free use and enjoyment of a certain  
Spring situated upon the lands thereby  
conveyed, for the use of the owner of the farm  
by this instrument conveyed, and the same  
being conveyed to the said Elkanah Penning-  
ton, the reservation aforesaid is hereby  
granted, bargained sold and conveyed unto  
the said Elkanah Pennington his heirs as-  
signs, But it is expressly understood  
between the said Levi and Elkanah Pen-  
nington, that the said Levi is to retain  
full and complete control and possession  
of the land hereby conveyed if he chooses so to  
do during his natural life, The said Elkanah  
Pennington or his heirs, hereby covenant to



pay of the consideration heretofore mentioned,  
the sum of two hundred dollars on the  
first day of January 1873, and three hun-  
dred dollars on the first day of January  
1874 to the said Levi; In consideration  
of this conveyance the said Elkanah  
Pennington hereby undertakes to support-  
and maintain in a decent and com-  
fortable manner, the said Levi Pennington  
during his natural life and to support and  
maintain for his use & benefit at all times  
when desired one horse and <sup>one</sup> cow, the exclusive  
property of the said Levi. The said Elkanah  
is also to support, maintain & permit to  
remain upon the premises hereby conveyed.  
George W. Pennington infant son of the said  
Levi until he shall arrive to the age of 21  
years, if he choose to remain with the  
said Elkanah but should he choose to  
marry or leave the house of the said Elkanah,  
then the obligation to maintain him is to  
be void from that time forward. It is further  
understood and agreed between the  
parties that if the said Levi Pennington  
should live as long as ten years from the  
date of this document, and be maintained by  
the said Elkanah, then the said Elkanah  
is to have an abatement out of the considera-  
tion money heretofore mentioned of the  
sum of One Thousand dollars but should  
the said Levi die before the end of ten  
years, then and in that event the said



Elkanah is to have an abatement of the  
consideration money at the rate of one  
hundred dollars a year from this time  
forward until such event shall happen.  
Should the said Levi live more than  
two years, no further abatement is to be allowed  
than is herein before provided for. As  
to the remaining one thousand dollars of  
the purchase money not before specially  
referred to after the expiration of ten years  
from this day, is to be paid by the said  
Elkanah to the said Levi at the rates of  
\$100<sup>00</sup> per annum there after, if demanded  
by the said Levi. Now should the said  
Levi die at any time previous to the year 1880,  
then and in that event, such of the purchase  
money as shall remain unpaid, according  
to the foregoing contract, shall be paid  
to the adm<sup>r</sup> of the said Levi on the 1st  
day of January 1880, if not otherwise disposed  
of by the said Levi before his death to secure  
which the Vendor here is hereby retained  
by the said Levi for the payment of such  
money. And it is further agreed between  
the parties that should the said Elka-  
nah die before the said Levi then this  
contract & Deed of conveyance is to be  
null and void, the land in that event  
to revert to the said Levi who is to refund  
to the adm<sup>r</sup> or heirs of the said Elkanah  
such sums of money as he may have  
advanced upon this contract. The said



Levi Pennington, on his part further agrees  
to warr<sup>nt</sup> the said Elkanah not to increase  
his present family at the expense and  
sustenance of the said Elkanah but  
should he do so the expense of such  
increased family is to be subject to future  
contract. The said Elkanah Pennington  
is to pay the taxes and County levies  
annually assessed upon said land.

In witness whereof the said Levi  
Pennington and Elkanah Pennington  
have herewith affixed their hands  
and seals the day and year first herein  
written

Levi Pennington *Seal*  
Elkanah Pennington *Seal*

Lee County Court.

I John B. West a Notary Public in  
and for said County in the State of  
Virginia do hereby certify that Elkanah  
Pennington and Levi Pennington parties to  
the foregoing deed and contract have each  
acknowledged the same before me, in my  
office to be his act and deed for the purposes  
therein mentioned, Given under my hand  
this 6th day of August 1872

John B. West N.P.

Lee County Court Clerk's office the 6th day of  
August 1872.

The foregoing Deed and contract, between  
Levi Pennington of the first part and El-  
kanah Pennington of the second part.

Levi Tennington  
To / Deed Copy.  
Elkanah Tennington  
Recorded in deed  
Book 16, Page 521

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The County of Virginia being duly shewn and  
is admitted to record upon the Certificate  
of John D. West, a Notary Public in and for  
the County of Lee and State of Virginia  
Jesse James, Jr., Clerk

at Copy  
State: J. D. H. Richmond  
Sept 15



James W. Orr,  
Judge County Court.

George W. Blankenship.

**ORR & BLANKENSHIP,**

**Attorneys and Counselors at Law.**

**COLLECTIONS A SPECIALTY.**

**COURTS:** Lee, Scott and Wise Counties, Virginia;  
Court of Appeals, Wytheville, Virginia; United  
States Court, Abingdon, Virginia.

**REFERENCES:**

POWELL'S VALLEY BANK, JONESVILLE, VA.  
PENNINGTON GAP BANK, PENNINGTON GAP, VA.  
DOMINION NATIONAL BANK, BRISTOL, VA.-TENN.

**Jonesville, Virginia,**

*[Faint, illegible handwritten text, likely bleed-through from the reverse side of the page.]*

Not in the  
State of affairs.



To Elkanah Pennington:-

You will please take notice that on the 11th day of November 1895, at the Court House of Lee County, Virginia, we will move the Circuit Court of said County to grant an injunction enjoining and restraining you from using water from our spring, and especially from renting or selling the same to citizens of Dryden, Virginia, or other persons and to compel you to account for the rents and profits received by you heretofore for the use of said water.

H. L. Flanary,

Lizzie Orr,

Rebecca A. Flanary,

Mary Flanary.

By--

Pridemore & Sewell,

Orr, Blankenship & Ewing, their Attorneys.



H. L. Hanson, et al  
vs } notice.

Elkanah Pennington

---

Executed by  
delivering a  
true copy of the  
within notice to  
Elkanah Penning-  
ton this Oct 26  
- 1895. J. M. Weston  
Deputy for  
Wm. P. Weston  
S. L. C.



The Commonwealth of Virginia,

To the Sheriff of the County of Lee---Greeting:

WE COMMAND YOU, That you summon

*Elkanah Flanary*

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held  
for the said Court on the *1st* Monday in *February*, 189*6*, to answer a

bill in Chancery, exhibited against *him* in our said court by

*H. L. Flanary, Lizzie Ormore Flanary, Rebecca  
A. Flanary and Mary Flanary. The said Rebecca  
A. Flanary being an infant and under age Sues  
by her next friend H. L. Flanary.*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-

house, the *21st* day of *January*, 189*6*, and in the

*120th* year of the Commonwealth.

*A. B. Munsey* Clerk.

A. L. Flanary et als

vs.

SUPREMA

IN CHANCERY.

Elkanah Pennington

Decr + B

p. q.

To / St. Feby Rules,  
Circuit Court.

Granted Jan. The  
29. 1896 being  
opening and  
delivering a true  
copy of the  
within notice  
to Elkanah —  
Pennington  
H. L. Gilmer, D. J.